# CONSTITUTIONAL HISTORY OF INDIA 1600-1950

M V PYLEE

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# CONSTITUTIONAL HISTORY OF INDIA

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# PREFACE

This book deals with the constitutional history of India. The significance of this history lies in the fact that the origins of the Constitution of the Indian Republic are rooted in the history of India under the British. Hnece no serious student of India's present Constitution can afford to ignore it. In fact, to understand the significance of many provisions in the Constitution as well as to gain insight into their background, one has to be familiar with the evolution of the constitutional system established and operated by the British in India.

There is hardly a parallel anywhere in the world to the amazing story of the British Indian Empire. That story began with the incorporation in England of the East India Company in the year 1600. By the middle of the eighteenth century the country had established its unrivalled sway over India and transformed itself into a great ruling power. For about a century thereafter it was the Company that ruled India with ultimate control exercised by the British Parliament.

With the transfer of power to the Crown in 1858, the Company's rule came to an end and the direct rule of the British Government began. It lasted nearly a century—ninety years, to be precise—until power was transferred to Indians in 1947. There was thus a full-fledged British administration in India for two crucial centuries of human history leaving an indelible mark on every aspect of Indian life and culture.

Since power was transferred as a result of negotiation and mutual agreement, India inherited the British system of government and administration in its original form. The framers of the new Constitution could not think of an altogether new system. In fact, what they did was more of a reconstruction with suitable modifications than of construction anew. And that is what makes the study of constitutional history important for anyone interested in the present Constitution.

This book, therefore, is intended to be a companion volume to my earlier books *India's Constitution* and *Constitutional Government in India*. While the latter work has a fairly detailed section dealing with constitutional history, the former has only a very brief chapter

on the subject. Many colleagues of mine who teach the subject in different parts of the country pointed out the lack of adequate treatment of this aspect, particularly in *India's Constitution*, and suggested that I should either add more detailed matter in it or bring out a separate volume on the subject. Since I was not happy to further increase the number of pages in *India's Constitution* which has already become much larger than the original volume due to the inclusion of additional matter in this revised second edition, the only alternative was to bring out this work in an updated form.

The book covers the entire ground of constitutional history without attempting at elaborate details. Many of the details which had relevance prior to 1947 have ceased to be so today. Hence each chapter has been written with sufficient care in selecting and including the matter that is considered to be necessary in a book of this nature. To make the story complete, a chapter on the salient features of the present Constitution has also been included.

I sincerely hope that this book will adequately serve the purpose for which it has been written.

*Cochin* M. V. P.
15.11.79

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CHAPTER 1

# THE EAST INDIA COMPANY

## *First Settlements*

THE ORIGINS of the Constitution of the Indian Republic are rooted in the history of India under the British. That history began with the incorporation in England of the East India Company in 1600, although the British did not become a ruling power of India until the second half of the eighteenth century. The story of the Company, from a commercial concern to the establishment of a vast empire, reads more like romance than history.

Attracted by the stories of the fabulous wealth of India and fortified by the adventurous maritime activity of the Elizabethan era, Englishmen were eager to establish commercial contacts with the East. To facilitate such a venture a group of enterprising merchants of London formed themselves into a company and secured for it a Charter from Queen Elizabeth I in December 1600. The Charter provided for the management of the Company a simple constitution. According to this, the top management of the Company consisted of a Governor and twenty-four members. It was authorised to organise and send trading expeditions to the East Indies. The Charter had granted the Company a monopoly of the trade with the East. It had also the authority to maintain a comparatively limited armed naval force for its security and also to make laws and inflict punishments for the good government of the Company and its servants.

All the first trading posts and settlements of the Company were along the coast of India. The very first of these was at Surat (1613) which was established as a result of a Royal *Firman* from the Mughal Emperor Jehangir. This was soon followed by Masulipatam (1616) and later by Hariharpur in the Mahanadi delta (1633), Fort St. George, Madras (1640), Bombay[1] (1669) and Calcutta (1686). Unlike their European rivals, the Portuguese and the Dutch, the English followed a strictly commercial policy and avoided every possibility of coming in collision with native powers.

[1] The Company was given the possession of the island and the port of Bombay by King Charles II "to be held of the Crown for an annual rent of £10."

In the year 1686, however, a departure was made, for the first time, from the policy of non-interference with internal affairs and an expedition was led against Chittagong. The expedition was an inglorious failure and only served to rouse the wrath of Emperor Aurangzeb who orderd the wholesale expulsion of the English from all their factories. The Company's position was, however, saved by timely submission as well as a display of strong naval strength. A treaty with the Emperor in 1690 restored to the Company its old privileges. A new factory was built in Calcutta in the same year which was to become the foundation, a century later, of the capital of the British Empire in India.

While the Company was consolidating and expanding its commercial activities in the East, develoments at home made its position weak. The Revolution of 1694 marks an important stage in the career of the Company. It brought the Company face to face with Parliament which resolved in the same year that "all subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament". Thus begins the influence and control of Parliament over the affairs of the East India Company.

In the meantime, a new rival company was formed to trade with the East and there arose as a result an unhealthy competition between the old and the new. Although the new company had a lot of political backing, it could not beat their more experienced rivals in the field of trade and commerce and suffered heavy losses. It was soon realised by both that competition in itself was neither a virtue nor conducive to their aims and objects. As a result, in 1708, the rival companies were amalgamated under the new title "The United Company of Merchants of England Trading to the East Indies". Thus the Company's monopoly in trade was re-established.

The new United Company had to be on good terms with the Ministers of the King in order to extend their privileges. This they did by resorting to systematic and constant bribery. In 1726, by a new Charter, the Company was empowered "to ordain by-laws and rules, provided they were reasonable and not contrary to the laws and statutes of England and they were not to have any force or effect until they had been approved and confirmed by order in writing of the Court of Governors". The same Charter also dealt with the Mayor's Courts in Calcutta, Bombay and

Madras and expressly introduced the laws of England into the Presidency towns. This shows how by this time the Company had become a partially sovereign body. In a speech which he delivered in Parliament in 1833, Macaulay had made this point clear by emphasising the semi-sovereign character of the East India Company well before the middle of the eighteenth century.

It was a strange coincidence in history that the emergence of the new United Company synchronised with the exit from the Indian scene of Aurangzeb, the great Mughal Emperor. The powerful unifying force that existed in the country under the iron rule of Aurangzeb wilted away no sooner than his death and India became a chaotic battleground of rival, contesting principalities. There was a vacuum in the sphere of all-India leadership. Into this vacuum moved in the English Company and gradually established itself as the unrivalled master of the Indian sub-continent.

But the establishment of the Company's mastery in India, however, was not an easy and smooth process. In its course, the Company had to fight against not only the disunited and faction ridden native rulers but also the serious opposition from European rivals, particularly the Dutch and the French. By the end of the seventeenth century, the Dutch power in India was practically eliminated, but the French were then in a stronger position than ever before. The real struggle between the French and the British began only by 1741 and continued for two full decades. During the first few years of this period, the French fortune was on the ascendancy, but with the capture of Arcot by Robert Clive in 1749, the tide turned in favour of the British. The struggle continued until 1761 when the French were decisively beaten in the Battle of Wandewash signalling the final triumph of the British power in the south.

Meanwhile, events of great importance were taking place in the north, in the interior of Bengal. Curiously enough, Clive was the connecting link between the two theatres of the struggle. Soon after his victories in the Karnatic wars, he was appointed to lead the Company's forces in Bengal and stem the tide of Siraj-ud-Dawla's (Nawab of Bengal) march on the Company's possessions. Clive, using treachery, cunning and bribery inflicted a crushing blow on the Nawab in the Battle of Plassey in 1757. The victory of Plassey may be appropriately termed as laying firmly the foundation of the British Empire in India. But Clive was not in a

hurry to proclaim that the English were the ultimate masters in India. Instead he recognised the sovereignty of the Mughal Emperor at Delhi and requested him in 1765 to cede to the Company the Sarkars, to separate Karnatic from Hyderabad and to grant in favour of the Company the Dewani of Bengal, Bihar and Orissa. But the underlying motive of the Company was fairly clear. The English were fast establishing themselves as the most important territorial power of the sub-continent.

### *Early British Administration*

The transformation of the Company from a commercial concern into a territorial power had important consequences. It disclosed the inherent incapacity of a trading body to assume the responsibility for the administration of a vast country. Cornewall Lewis, a Member of the House of Commons, declared during the debate held on the Bill (1858) that finally transferred the Government of India from the Company to the Crown that "no civilised Government existed on this earth which was more corrupt, more perfidious and more rapacious than the Government of the East India Company from 1765 to 1784". According to *The Cambridge History of India*, "there seemed a danger not only that misgovernment in India might tarnish the name of Great Britain as an imperial State, but that the Indian interests in England, supported by huge revenues and corrupt Parliamentary influence, might gain a preponderating and improper power in home affairs".[2]

We may briefly discuss the salient features of this corrupt and notorious system of the early administration of the Company.[3]

The Company's possessions in India by now were grouped under three Presidencies, Bengal, Bombay and Madras. Each Presidency was independent of each other and was directly responsible only to the Court of Directors in England. The Government of each Presidency was headed by a President, also called Governor, and Council whose membership varied between twelve and sixteen. The Administrative authority was vested in the Governor and Council as a whole and, as such, decisions were taken by a majo-

[2] Vol. V, p. 183. See also Thompson and Garrat, *British Rule in India*, pp. 128-31.

[3] A comprehensive survey of the company's government in India may be seen in *Early Administrative System of the East India Company in Bengal*, D. N. Banerjee, 1943.

rity of votes in the Council. For the purpose of convenience, as the functions of the administration increased, the Council delegated some of them to a Select Committee. The Governor and Council had great powers, both civil and criminal, for the maintenance of discipline among the Company's servants and of peace and order within their jurisdiction.

Subordinate to the Governor and Council was a body of military and civil servants of the Company. These servants were classified into four categories—the Writers, Factors, Junior Merchants and Senior Merchants—in ascending order. The Writers, who were young cadets receiving only a nominal salary but having the privilege of private trade, became after a period of service Factors. The Factors in their turn became Junior and Senior Merchants from among whom the members of the Council were chosen. The salaries of the Company's servants, on the whole, was ridiculously low. For example, a Writer got only 10 pounds annually, a Councillor 80 pounds and a Governor 300 pounds.

These incredibly low salaries, however, were no index of their annual earnings or otherwise. They used their official positions freely and unscrupulously, to get rich quick and extracted presents, bribes and levies from the poor natives. As observed by Lecky: "Never before had the natives experienced a tyranny which was at once so skilful, so searching and so strong....While districts which had been populous and flourishing were at last utterly depopulated, and it was noticed that on the appearance of a party of English merchants, the villages were at once deserted and the shops shut and the roads thronged with panicstricken fugitives." A Parliamentary Committee which investigated these aspects of the Company's administration in 1773 estimated the ill-gotten gains of the Company's servants amounted to £6 million only during the first decade after Plassey.[4]

Such was the condition of the administration of the Company which Clive was charged to rectify and improve during his third visit to India. Even Clive, no stranger himself to the outrageous practices of the Company's servants, was so shocked by the extent of corruption, extravagance and luxury that he wrote about it in strong terms to the Court of Directors in 1765. Clive's efforts to clean up the Augean stables of the Company's administration in

[4] Sir Alfred Lyall calls this as "the only period of Anglo-Indian history which throws grave and unpardonable discredit on the English name."

Bengal took the following shape : (1) He reconstituted the Council at Calcutta and established a Select Committee of four members who were always available at the headquarters. (2) He also reorganised the administration of the minor Nawab who was the figurehead sovereign of Bengal by appointing a committee of three, a Muslim and two Hindus, to be in charge of it. (3) He redefined the relationship of the Company as well as its servants with the Nawab and laid the foundations of the double government under Dewani.

Clive left India in 1767 and was succeeded by Warren Hastings. Between 1767 and 1772, the year of the beginning of direct Parliamentary control, Hastings as Governor of Bengal tried his hand at further reforming the Company's administration in Bengal. Among the reforms initiated by Hastings, the following deserve special mention : (1) The lands were to be let out to revenue farmers for a period of five years. (2) A Committee of Circuit, consisting of the Governor and four members of the Council, was appointed to visit the principal districts and form the five years, settlement. (3) As the Directors had declared their policy to "stand forth as the Dewan" of Bengal, Bihar and Orissa, he took over the function of collecting the revenue from the Naib Dewan (of the Nawab) and appointed for the purpose a new functionary called the "Collector". The new title truly reflected its function ; for the Collectors directly collected the revenues. (The office of the Collector was to be abolished later on account of their oppressive dealings with the people). (4) Hastings also tried to safeguard the interests of the *ryots* from the undue exactions of the zamindars by requiring the latter to give written *pattas* or agreements to the *ryots*. (5) Finally, Hastings also brought about a number of reforms in the judicial field.

The comprehensive nature of the reforms of Warren Hastings, civil, revenue and judicial, clearly establish the transformation of the Company from its commercial character into the position of a full-fledged territoiral power. The mask of *Dewani* was thrown off and the Company stood forth as the real ruler of Bengal, Bihar and Orissa. It was only natural that two consequences flowed from this newly-acquired status : further territorial expansion and increased Parliamentary control. We shall examine the nature and extent of these in the next chapter.

CHAPTER 2

# PARLIAMENTARY CONTROL: FIRST ATTEMPT

## *The Regulating Act*

WE HAVE already seen the corrupt nature of the Company's administration ever since its assumption of the new role of a ruler. References to the evil results of that administration and the disgrace it brought to the fair name of England were often voiced in Parliament and outside. Edmund Burke, the great Parliamentarian, once accused the Ministers of "having sanctified this bloodshed, this rapine, this villainy, this extortion—for the valuable consideration of £400,000....This crime-tax being agreed to, we heard no more of malpractices...."Men who returned to England after serving the Company in India were so rich that much of their riches was used to corrupt the social and political life of the country. They were nick-named *Nabobs*, a corrupt version of the term Nawab, and looked upon with contempt. There were influential persons in England who wondered whether it was proper to permit a commercial concern like the Company to become a territorial power.

The Company itself was in difficulties. Extension of territories added to the administration a tremendous burden. Costly wars became inevitable and these undermined its financial stability. Hitherto the Company was in a position to lend money to the Government of England. But by 1770 the position was reversed and the Company was on the verge of bankruptcy. To save the situation, Lord North was approached by the Company in 1772 with a request for a loan. Seizing the opportunity, Lord North moved for the appointment by Parliament of a Committee to enquire into the affairs of the Company. The report of the Committee paved the way for the passing of the Regulating Act.

The British Parliament passed the Regulating Act, 1773, the first major measure calculated to remove the evils inherent in the constitution of the Company in England and to improve the tone of its administration in India through Parliamentary control.

## *The Regulating Act*, 1773

In England, the two institutions which determined and looked after the entire operation of the Company were the Court of Proprietors and the Court of Directors. Any shareholder who held shares worth five hundred pounds was entitled to have a vote in the former body, while one who held shares worth a hundred pounds was eligible to be elected to the latter body. There were twenty-four Directors on the Court. Although the salary of the Director was only three hundred pounds a year, the post had great attractions on account of the opportunity that it provided for nepotism. Many Directors easily found lucrative jobs in India for their sons and relations. Hence there was a scramble to purchase enough shares to get oneself elected to the Court of Directors. Votes in the Court of Proprietors were manipulated so as to shield the evil deeds of servants of the Company in India. It became the ambition of many servants when they returned home to get into the Court of Directors by making use of the illgotten gains they had acquired in India. Hence there arose the evil of 'trafficking in votes'. The Regulating Act tried to mitigate this evil by raising the qualification for Proprietor to one thousand pounds and a Director to two thousand pounds. It also extended the period for which the Directors were elected. Further, it provided that instead of the whole body being re-elected at one time, one-fourth of the membership of the Court of Directors should be renewed annually.

The Act had ensured also a type of direct Parliamentary control over the Court of Directors. For this purpose, the Directors were required to submit copies of those letters received from the Governor-General in Council regarding revenue matters to the Treasury and those relating to the civil and military government to one of the secretaries of the Government.

Besides, to deal specifically with evils of the Company's administration in India, the Act provided the following five remedial measures :

(*a*) A new executive for the Government of the Presidency of Bengal.
(*b*) A new relationship between the Presidency of Bengal and those of Madras and Bombay.

(*c*) Setting up of a Supreme Court at Calcutta.
(*d*) Reforms for the Civil Service.
(*e*) A new procedure for the making of Regulations.

The most serious defect in the Government of Bengal was the inability of its executive to check and correct the actions of the servants of the Company. The Act sought to remedy this by vesting in a Governor-General and four Councillors the civil and military government of Bengal, Bihar and Orissa. They were to hold office for five years and were not removable in the meantime except by the King on the representation of the Court of Directors. The importance of this provision lay in the fact that Parliament sought to control the actions of the Governors by imposing upon them Councils consisting of men specially sent out from England and who were not servants of the Company. The Council was to take all its decisions by a majority. The Governor-General had a casting vote in case of an equality of votes. The decision of the Council was binding upon him.

One of the anomalies in the working of the Company's administration in India prior to 1773 was that the three Presidencies, Bengal, Bombay and Madras, were independent of each other. Each was responsible only to the Court of Directors in England. As a result, there was no effective coordination of the activities of the three Presidencies. In fact, their policies at times even collided with each other. The Act attempted to remedy this by establishing the supremacy of the Bengal Presidency over the other two by authorising it exclusively to deal with matters of war and peace.

Prior to the Act, the salaries of the Company's servants, the civil and military alike, were almost nominal. Naturally, few resisted the temptation of enhancing their incomes through illegal and immoral means such as bribes, presents, private trade and usurious moneylending practices. The Act prohibited these evil practices and imposed on offenders such penalties as fine, imprisonment or deportation to England for trial. Further it provided for the payment of liberal salaries for the higher classes of the Company's servants.

The only important Court that existed in Calcutta before 1773 was the Mayor's Court. Appeals against this Court lay first to the President and Council at Calcutta and finally in the King-in-Council in England. The basic defect of this system was that

there was no separate and independent judicial check over the actions of the executive. To remedy this unwholesome situation, the Act sought to establish by a Royal Charter an independent judicial tribunal, the Supreme Court, with a Chief Judge and three Puisne Judges. The Court was to exercise civil, criminal, admiralty and ecclesiastical jurisdiction. An appeal against the Court's decision was to be to the King-in-Council in England.

The Act contained a few important directions with a view to putting down bribery and corruption which were rampant among the Company's servants. According to these the Governor-General, members of his Council, the Judges of the Supreme Court and every other person holding any civil or military office under the Crown or the Company were prohibited from receiving directly or indirectly any presents, gratuities or pecuniary rewards or engaging in any transactions. Provision was also made to try and punish the offenders by the Court of the King's Bench Division in England.

The last of the important measures contemplated by the Act was the provision for the making of Regulations. According to this, the Governor-General in Council was to have the power to make Regulations for the good order and civil government of the possessions of the Company. The Regulations so framed were required to be registered and published in the Supreme Court with the assent of the Court. They could be set aside only by the King-in-Council.

The foregoing analysis will indicate that the objective of the Regulating Act was to remove from the Company the political power that it had in India and transfer it to Parliament—although this was not fully achieved by the Act—leaving to the Court of Directors only the external pageant of a large establishment. In its effect the Act has been compared, in its relation to the Act of 1858 which finally brought about the complete transfer of power from the Company to the Crown, with the earliest traction engine in its relation to the latest model of a locomotive. A close study of the Act will show that it relied considerably on the theory of separation of powers which was so popular in Europe at that time. Thus, the regulations made by the Governor-General in Council were required to be registered in the independent Supreme Court, which in its turn was to be a check upon the servants of the Company. Unfortunately, this system of checks and balances

when put into effect did not work properly, thus proving the inherent defects of the Act itself.

The Act in operation showed three main defects : First, the working of the Governor-General in Council was most inefficient. The rule of making decisions by a majority in the Council was found to operate against the will of the Governor-General as three of the four members were usually united against him. As a result, during the first two years of his Governor-Generalship, Warren Hastings was rendered absolutely powerless. Only when death removed one of the rival members from the scene could he establish his authority by getting a majority of the Council on his side. Thus the Governor-General's position was very weak both in Bengal and in regard to the control he was expected to exercise over the other two Presidencies.

Secondly, the Act was vague about the extent of the control to be exercised by the Governor-General over the subordinate Presidencies and, by any interpretation, the control envisaged was not extensive. This was proved by later events, notably by the Maratha and the Mysore wars initiated by the Bombay and Madras authorities, respectively, and to which Hastings was opposed.

Thirdly, the Act had not defined the relationship between the Supreme Court and the courts of the Company, the civil and criminal courts in the districts over which the Governor-General in Council had appellate powers. The Supreme Court claimed as a right its jurisdiction to hear appeals from the Governor-General in Council on the ground that it was constituted by a Royal Charter. The Court also claimed jurisdiction upon the entire native population and not merely on the 'British subjects' of the Company. Naturally, conflict between the Court and the Governor-General in Council was inevitable and this proved to be the worst defect of the Act. Moreover, the Supreme Court was not popular with the native population. The English lawyers struck the greatest fear among the local people and the rule of the Supreme Court, in the words of Macaulay, proved a reign of terror. The Court was charged with stopping the wheels of Government by technicalities of English law and of effecting a total dissolution of the social order.

Mention must also be made that the changes brought about by the Act in the constitution of the Home Government of the Com-

pany did not produce the intended results. The raising of the qualifications helped the creation of a permanent oligarchy by reducing the number of stock-holders to a very small size. Nor was this small number free from faction and disorder ; nor did their integrity of conduct show any improvement from what existed in the past.

The disastrous working of the Regulating Act, in effect, convinced the British Parliament that the endeavour to subject the Company's Government in India to direct Parliamentary control was a complete failure. Nevertheless, the Regulating Act marks an important stage, by fixing the location of the administrative centre of gravity definitely at Calcutta with the Governor-General as its acknowledged head and deriving his authority from an Act of the British Parliament. From the point of view of the people of India, the most important provision of the Act was that which required every officer to submit to the Board of Directors on his return to England a list of properties acquired by him, with an explanation of how they were acquired. It was a commendable attempt to secure purity of administration although, in reality, it failed to achieve the desired result.

An Amending Act was passed by Parliament in 1781 with a view to remedying some of the glaring defects noticed in the working of the Regulating Act. The Amending Act exempted the official actions of the public servants of the Company from the jurisdiction of the Supreme Court. Secondly, it tried to settle the questions relating to the jurisdiction of the Court over servants of the Company and the native inhabitants. Thirdly, it made clear as to what law was to be administered by the Supreme Court. Fourthly, the Act recognised and confirmed the appellate jurisdiction of the Governor-General in Council in cases decided by the country Courts. Finally, it empowered the Governor-General in Council to frame regulations for the Provincial Courts and Councils.

## Chapter 3

# DOUBLE GOVERNMENT

In spite of all these new measures introduced by the amendments of 1781, the Regulating Act proved to be unsatisfactory to realise its objectives. Reports of the many misdeeds of the Company's Government in India reached England and the matter was raised in Parliament and heated debates ensued. Prompt enquiry was demanded and, as a result, Parliament appointed two committees, one of which was presided over by Edmund Burke. The findings of the committees went against the Governor-General and the Chief Justice and their recall was recommended. But the Court of Proprietors refused to recall Warren Hastings who, in their opinion, was doing a wonderful job in India. This indeed amounted to a constitutional crisis, for it demonstrated the unreality of Parliamentary control over the Company's political affairs.

To remedy this unwholesome situation, the coalition Cabinet of Lord North and Charles Fox, which was then in power, brought forth a Bill with far-reaching provisions. It sought to distinguish sharply between the commercial and political functions of the company, and to place the latter under the complete control of the Crown. The Bill was passed by the House of Lords but, as the House of Commons did not accept it, the Ministry itself had to resign.

Pitt the Younger, who formed the next Cabinet, introduced a new Bill which was carefully drafted in order not to antagonise the Court of Directors. The Bill was passed and it received Royal assent in 1784 and became known as Pitt's India Act. According to the Act, the Court of Directors was allowed to manage the commercial affairs of the Company as they liked. But with respect to its political affairs, a Board of six Commissioners, popularly known as the Board of Control, was appointed to control such affairs. The Board had on it the Chancellor of the Exchequer, a Secretary of State and four Privy Councillors. They were all appointed by the King and were to hold office during his pleasure. The Board, as its composition itself would indicate, was a power-

ful body and had full powers of 'superintendence, direction and control' of all operations of the civil and military government of the British territorial possessions in the East Indies.

The Act had reduced the powers of the Court of Proprietors to the receipt of dividends and the election of Directors who, however, retained their right to make appointments in India. But the Crown had the power to recall any of the Company's servants.

In effect, for the first time, the power of ultimate control was vested in the new Board of Control. This does not, however, mean that the Court of Directors became important in the Company's affairs. They still continued to exercise immense powers of patronage as well as substantial influence over the Government in India. As the authors of the Report on Indian Constitutional Reforms, 1918, rightly observed: "We must not conclude, however, that the supremacy of the President of the Board of Control left the Directors with no real control. Their position was still a strong one; the right of initiative still rested ordinarily with them; they were still the main repository of knowledge, and though the legal responsibility lay with the Government they exercised to the last a substantial influence upon details of administration."[1]

The changes which the Act brought about in India were few and comparatively unimportant. The membership of the Councils of the Governor-General and the Governors was reduced to three and the Commander-in-Chief was made a member. The power of the Governor-General in Council over the subordinate Presidencies was extended to include the application of the revenues of the Presidencies. Finally, the Act enunciated a new principle in the Company's relations with the Indian Princes, namely, a policy of non-intervention so as to avoid all wars and conquests.

The Pitt's India Act also made a significant contribution to make better provision for the trial in England of offences committed by the Company's servants during their service in India. A special court, consisting of three judges, four peers and six members of the House of Commons, was created to deal with such cases.

### *Territorial Expansion*

The policy of non-intervention in the affairs of the Indian rulers

[1] Para 3 on p. 18.

enunciated by the Act of 1784 and imposed upon the Company's Government in India, however, was a short-lived one. Lord Cornwallis, who succeeded Hastings as Governor-General, indeed did make an attempt to practise it. But he could not succeed. The territorial ambitions of Tipu Sultan of Mysore compelled Cornwallis to enter into a Triple Alliance of the English, the Nizam and the Marathas, wage a war with Tipu, defeat him and force him to part with half of his dominions. As a result, the Company extended its sway over Malabar, Coorg, Dindigul, Baramahal and the command of the passes through which the Sultan of Mysore used to descend upon Madras.

Cornwallis was succeeded by Lord Wellesley who was convinced that if the English were to stay in India, it could not be on the basis of their being one among the many Indian powers contending for supremacy, but of their being the paramount power in India. As a result of the pursuit of this new policy, the British Empire in India was, under Wellesley's direction, transformed into the British Empire of India. The device that he employed for this purpose was a system of subsidiary alliances with Indian rulers. According to this, a Prince who came under the system had to (*i*) leave all his disputes with his neighbours to the arbitration of the British, (*ii*) stop all dealings with other European powers, (*iii*) allow for his security the stationing within his territory of a British subsidiary force, and (*iv*) cede territory to the Company to cover the maintenance of the subsidiary force, or, in the alternative, pay a specified amount annually for the same purpose. The Nizam of Hyderabad was one of the first to come under the system. Others followed suit. Those who did not come in voluntarily were soon forced to do so. Wellesley had already exterminated Tipu. He next turned to the Marathas who were not willing to accept the Subsidiary Alliance System. In a series of battles he defeated the divided Maratha rulers and brought them under his control. Wellesley's significant contribution to the British Indian Empire has been summed up by Sir Alfred Lyall in the following words :

> By occupying the Imperial cities of Delhi and Agra with the continuous tracts on both sides of the Jamuna, and by annexing the whole country between the Ganges and the Jamuna rivers, he carried forward British territory from Bengal north-westward to the mountains with a frontier resting upon the upper course of the Jamuna; and by his acquisition of the Cuttack Province he

secured the continuity of the British territory south-eastward along the sea coasts, joined the two Presidencies of Bengal and Madras and established sure communications between them.[2]

Wellesley's costly wars, however, alarmed the Court of Directors of the Company who recalled him and appointed in his place, once again, Lord Cornwallis. But Cornwallis died soon after his arrival in India. Sir George Barlow was his successor. Neither he nor his successor Lord Minto followed an expansionist policy. But Lord Hastings who succeeded Minto proved to be a follower of Wellesley. He proceeded upon the principle that the British power had become the suzerain power in India. On the basis of this principle, the foreign relations of the Indian Princes came under the surveillance of the paramount power which also made itself responsible for their military protection. Further, there was considerable extension of the territory that was under the Company's direct rule.[3]

Lord William Bentinck who succeeded Hastings was a person imbued with pacific motives. Neverthless, he could not avoid reaping the fruits of Wellesley's Subsidiary System. The Nizam of Hyderabad, on account of arrears in the payment for the subsidiary force, had to cede Berar to the English. Mysore and Coorg were taken over to avoid 'maladministration and internal strife'. Thus a number of Native States, big and small, were brought under the direct rule of the Company during Bentinck's Governor-Generalship.

The process of expansion continued in the periods of Lord Minto and Lord Auckland.[4] As a result, the scope of Anglo-Indian diplomacy was extended even beyond the western frontiers of India and embraced all West Asia. Lord Dalhousie enacted the grand finale of this fascinating drama of territorial expansion by annexing the whole of the Punjab and Lower Burma through conquest, and a number of Native States in central and northern

[2] Sir Alfred Lyall, *Expansion of British Dominion in India*, p. 231.

[3] For example, as a result of the war with Nepal, 'all the hilly country that overhangs Rohilkhand, Agra and Oudh was annexed and the British frontier pushed northward till it touched Tibet.' Lyall, Ibid., p. 263.

[4] Napoleon's treaty of friendship with the Czar of Russia in 1807 revised his plans to conquer India by leading an army through West Asia against India. This made Lord Minto send special missions to the rulers of West Asian States like Persia and Afghanistan.

India through the application of the Doctrine of Lapse.[5] In addition to annexation by conquest and lapse, Dalhousie added Oudh to British India in 1856 on the ground that protracted misgovernment prevailed in the State. Thus, the transformation of the East India Company from a commercial concern to a territorial power, which began with Clive in 1757 and extended over a period of a century, culminated under Canning, the successor of Dalhousie, in the establishment of a mighty British Empire, unrivalled in history, embracing the entire Indian sub-continent.[6]

Side by side with the territorial expansion of the Company's possessions in India, there was also increasing Parliamentary control over its affairs. The periodic renewal of the Company's Charter gave Parliament the opportunity to hold enquiries into its affairs. These provided the basis for altering, modifying or even abrogating its privileges. There are at least five such important occasions when Parliament expressed its will through definite enactments extending its control over the Company. The first of these was in 1786.

### *The Act of 1786*

The Act was very short and yet very significant. It was passed chiefly at the instance of Lord Cornwallis who succeeded Warren Hastings. According to it, the Governor-General was empowered

[5] Dalhousie himself defined the doctrine as follows :

'I take occasion of recording my strong and deliberate opinion that in the exercise of wise and sound policy, the British Government is bound not to put aside or neglect such rightful opportunities of acquiring territory or revenue, as may from time to time present themselves, whether they arise from the lapse of subordinate States, by the failure of all the heirs naturally, where the succession can be sustained only by the sanction of the Government being given to the ceremony of adoption according to Hindu Law.' The States that fell victim to this policy were Satara, Sambalpur, Jhansi and Nagpur.

[6] Writing about the relationship of the British with the Indian States, Sir William Lee-Warner marks out three distinctly different periods : (*i*) the period of 'ring-fence' extending to 1813 when the Company refused to afford protection to native States lying beyond a certain limit ; (*ii*) that of 'subordinate isolation, which lasted till 1857 when Lord Hastings broke down the 'ring-fence' and filled the map of India with 'protected' States ; and (*iii*) of 'subordinate union' from 1858 under which the Queen of England guaranteed to the then existing States protection under the Crown as well as territorial integrity. See B. G. Sapre, *'The Growth of Indian Constitution and Administration*, 1929, p. 73.

to override the majority of his Council on his own responsibility. It thus removed a serious defect of the Regulating Act and made the Governor-General's position more authoritative.

### *The Charter Act of 1793*

The Act made no important change to the position then existing. It affirmed that the territorial possessions and the exclusive privileges of trade enjoyed by the Company would continue for a further period of twenty years. It also provided for the payment of the salaries of the members and staff of the Board of Control out of Indian revenues.

A serious attempt was made to regulate the Company's finances which were in a rotten condition, particularly as a result of the mounting expenses caused by several wars in India. The Act also made a few minor modifications to the system of the government in India. Of these, we may make a special note of the new procedures regulating the working of the Councils in the Presidencies and the new powers given to the Governor to override the Council.

### *The Charter Act of 1813*

This Act was preceded by a searching enquiry conducted by a Committee of the House of Commons into the financial affairs of the Company. The Report of the Committee, in the words of Ilbert, was a standard authority on Indian land tenures, and the best authority on the judicial and police arrangement of the time.[7] Although the Act renewed the Charter for a further period of twenty years, it took away the exclusive privilege of the Company to trade in India. The Indian trade was thrown open to all British subjects except in tea in which the Company was allowed to retain a monopoly. The Act also provided for the maintenance of separate accounts for commercial and political activities by the Company. It confirmed the patronage of the Court of Directors subject to the approval of the Crown in the case of higher appointments and of the Board of Control in the case of certain others. It also limited the number of British troops the Company was allowed to maintain in India at its own expenses. Finally, it allowed British subjects to go out to India either as traders or as missionaries and also to settle down there under a system of licen-

[7] Sir L. C. Ilbert, *The Government of India*, p. 73.

ces. The Act thus marks the beginning of the ecclesiastical establishment in India. It also provided for the setting apart of Rs. 100,000 every year for "the revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of sciences among the inhabitants of the British territories in India."

### *The Charter Act of 1833*

Of all the Acts passed by the British Parliament to regulate the affairs of the East India Company, the Charter Act of 1833 stands out as the most comprehensive and far-reaching in effect. According to Lord Morley, it was 'certainly the most extensive measure of Indian Government between Mr. Pitt's famous Act of 1784 and Queen Victoria's assumption of the Government of India.'

There were circumstances both in India and England which necessitated the passing of the Act. In India, the policy of intervention and territorial aggrandisement pursued by Wellesley and Hastings had added enormously to the territories of the Company and to the consequent difficulties in administration. In England, Parliamentary reforms had brought into being a reformed House of Commons where liberalism was on the ascendancy. Further, there was a clamour for freedom of trade with India, unrestricted immigration of Europeans into India, reform of Indian laws and improvement in the state of education prevailing in India. It is also important to mention the influence, among others, of two Liberals who were intimately associated with the Company's headquarters in England at the time. These were Macaulay and James Mill. The former who was then in Parliament was Secretary to the Board of Control, and the latter was Examiner of India Correspondence at India House.

It is also relevant to mention the strong sentiment that prevailed among several members of Parliament who thought that it was "preposterous to leave the political government of an immense empire in the hands of a joint stock company" without even a semblance of association in it by the "native population".

As a result of the Act, the last traces of the commercial monopoly which the Company enjoyed were abolished and all restrictions to European immigration into India were removed. The unhindered flow of Europeans into India made the reform of

Indian Law imperative. But the powers exercised by the Governor-General in Council were not sufficient to meet the situation. The Council's Regulations could have no jurisdiction over the Supreme Court. The only remedy was, therefore, to increase and extend the Council's powers. Accordingly, the Governor-General in Council was empowered by the Act 'to make laws and regulations for the persons and for all Courts' in British India. Such laws were not to be registered with the Supreme Court, but automatically to become Acts of the Governor-General in Council.

Further, a Law Commission was appointed, on the recommendation of Macaulay, for 'the codification of the laws' which were already in existence. The three great principles which were to govern such codification, according to Macaulay, were 'Uniformity where you can have it, diversity where you must have it, but in all cases certainty'. To facilitate the law-making functions of the Governor-General in Council, a Law Member, an English Barrister, was added to the Council. It was also provided that the Council's powers of law-making would override the authority of the Governors of Madras and Bombay who were at the same time deprived of their independent powers of law-making. Macaulay was the first Law Member under the Act and was also appointed the President of the Law Commission.

The Act tried to remove a principal defect of the Company's administration in India, namely, the union of the trader with the sovereign, by ordering the Company to close its commercial business as soon as possible. Another interesting provision of the Act dealt with education and employment of Indians in the public services. It laid down in emphatic terms that "fitness is henceforth to be the criterion of eligibility" and "that no native of the said territories, nor any natural-born subject of His Majesty resident therein, shall by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any place, or employment under the said Company." It was this clause which, according to Lord Morley, made the Act of 1833 the most important Indian Act passed by Parliament till 1909. Whether the policy initiated in this provision was given effect in practice or not, it certainly reflects indeed a liberal and humanitarian attitude on the part of the British Parliament.

The Act declared "that a full, complete and constantly existing right and power is intended to be reserved to Parliament to con-

trol, supersede or prevent all proceedings and Acts whatsoever" of the Governor-General in Council and "in all respects to legislate for the said territories and all the inhabitants thereof in as full and ample a manner as if this Act had not been passed..."

The Act directed the Governor-General in Council to take steps both for the amelioration of slaves in India and to propose measures for the abolition of slavery throughout India.

Provision was made under the Act for the training of civil servants for India at the Company's College at Haileybury and regulated admissions to that College.

Finally, a new Presidency was created under the Act, namely, the Presidency of Agra.

While the Regulating Act had initiated a process of centralisation by creating the office of the Governor-General, the Act of 1833 marked the culmination of that process by establishing the complete mastery of the Governor-General in Council over the entire British Indian administration. From 1833 to 1861 when the Indian Councils Act was passed, British India was in the grip of this highly centralised system of administration which had its impact on the character of the British Government in India until its disappearance in 1947. The salient features of this system of government will be discussed in some detail later. We may here continue the general survey of Parliamentary enactments.

### *The Charter Act of 1853*

The most significant provision of the Act of 1853 was that it did not renew the Charter for a specified period. Instead, it said that the Indian territories would remain under the government of the Company, 'in trust for the Crown, until Parliament should otherwise direct'. The Act reduced the number of Directors to eighteen from twenty-four and provided that six of them should be appointed by the Crown. It authorised the appointment of a Lieutenant-Governor for Bengal. It also provided for the enlargement of the Executive Council of the Governor-General to cope with its extended functions in law-making. Finally, it took away the patronage of appointments from the Court of Directors, and the Civil Service of India was thrown open to competition. A year later, by a new enactment, the Act of 1854, Parliament provided for the appointment of Chief Commissioners to head minor provinces in India.

## Chapter 4

# AN ASSESSMENT OF THE DOUBLE GOVERNMENT BETWEEN 1784 AND 1858

The principle underlying the Pitt's India Act was that the Board of Control would be able to regulate and control the policy of the Court of Directors in England so far as it related to the political affairs of the Company. But this did not mean that Parliament intended to introduce a system of direct government. Instead it wanted the Company to rule and the Board only to control. Thus the objective of the Pitt's Act which introduced a form of Double Government failed. We may briefly consider the manner in which it failed and the reasons for the failure.

By 1793, the first Commissioner of the Board was called the President of the Board of Control and his office was immensely strengthened. The net effect of the changes brought about by the Act of 1793 was that collective action of the Board became a fiction and all power came to reside in the hands of the President who happened to be a member of the Cabinet. By 1841, by a process of gradual elimination, the Board consisted of only one person, namely, the President. Under the guise of controlling the political affairs of the Company, the Board acquired not only an access to the correspondence of the Company but even the power to approve of the drafts prepared by the Company with suitable modifications or additions.

The President and the Secretary of the Board were members of a political party. They were both generally ignorant of the conditions in India. They came and went along with the party that came to power. Naturally their opportunity to acquire sufficient knowledge about Indian affairs or to develop a sustained interest on India were very little. As a result, the administration of India became thoroughly irresponsible. The Directors could not provide an effective check over the President. Their interest became confined to the patronage they exercised which, it is estimated, amounted to £15,000 per year. They were afraid to challenge the President lest he, through his political influence, deprive them of this patronage.

While on the one hand effective power was passing into the hands of the President, his irresponsibility to Parliament was being increased by a silent change in the attitude of Parliament. Hitherto, Parliament was keen to expose the misdeeds of the Company in India. But by 1784 it became a constant anxiety of the Ministry of the day to keep the affairs of India away from Parliament's gaze. This did not help either the British administration in India or its control in England by the Board.

According to Lord Palmerston, the Double Government was inconvenient, cumbrous and complex. The functions of government and responsibility were divided between the Court of Directors, the Board of Control and the Governor-General in India. "Before a despatch upon the most important matter can go out to India, it has to oscillate between the Cannon Row and the India House." Such a procedure was hardly conducive to even the most minimum degree of efficiency.

The highest officers of the Company were appointed by the Court of Directors, but they could be recalled by the Crown. Under such a system the position of the head of the Indian Administration, the Governor-General, was precarious indeed. He was obliged to serve two masters at home and he managed to please the Board President through private correspondence. Lord Curzon in his *British Government in India* gives a pathetic account of the trials and tribulations of the Governor-General under the system of Double Government.

"Had a Committee been assembled from the padded chambers of Bedlam, they could hardly have devised anything more extravagant in its madness, or more mischievous in its operation."

One should add to the above reasons the indifference of the House of Commons to the affairs of India. As Macaulay complained in his memorable speech of 1833: "A broken head in Cold Bath Fields produced a greater sensation among members of Parliament than three pitched battles in India....Even when my Right Honourable Friend, the President of the Board of Control, made his most able and interesting statement of the measures which he intended to propose for the government of a hundred millions of human beings, the attendance was not so large as I have seen it on a turnpike or a railroad bill."

On the other hand, he said, "there was the Company which was neither Whig nor Tory, neither High Church nor Low Church.

It cannot be charged with having been for or against the Catholic Bill, for or against the Reform Bill. It has constantly acted with a view, not to English politics but to Indian politics...and amidst all... agitating events has preserved strict and unsuspected neutrality".

This does not mean that one could endorse Macaulay's view that a commercial body with a Court of Directors functioning at a distance of over 6,000 miles away was fit to govern the destinies of a vast empire. But in the absence of a better alternative, perhaps, the Directors were preferable to the irresponsible Board of Control. The government of a huge country with a population of over a 100 million with many ruling Princes was not merely an anomaly, it was plain absurdity.

### *The Act of 1858*

The Indian Revolution of 1857, the first attempt to overthrow British rule in India after it was firmly established, gave the death-blow to the old system. The Revolution touched off a new discussion on India in the House of Commons resulting in the adoption certain Resolutions embodying the principles which should form the basis of a new policy. A Bill was introduced on this basis which finally became 'The Act for the Good Government of India' of 1858.

The Act in no substantial way altered the system of government that prevailed in India but confined itself to the improvement of the machinery by which the Indian Government was to be superintended and controlled in England.

The Act abolished the Court of Directors and the Board of Control altogether. It transferred the government, territories and revenues of India from the Company to the Crown. Further, it declared that India was to be governed by and in the name of the English Sovereign and authorised the appointment of an additional principal Secretary of State (for India) and created the Council of India.

Queen Victoria's Proclamation of 1858, which brought the East India Company's century-old rule to an end, said among other things :

1. Now, therefore, we. . . .have taken upon ourselves the said Government.
2. We appoint him, Viscount Canning, to be our First Viceroy and Governor-General in and over our said territories, and to administer the govern-

ment thereof in our name, and generally to act in our name and on our behalf' subject to such orders and regulations as he shall, from time to time, recei'e through one of our Principal Secretaries of State.

3. We hereby announce to the native Princes of India that all treaties and engagement made with them by or under the authority of the East India Company are by us accepted and will be scrupulously maintained, and we look for the like observance on their part.

4. We desire no extension of our present territorial possessions; and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment of those of others.

5. We shall respect the rights, dignity and honour of native Princes as our own; and we desire that they, as well as our subject, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.

6. We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fill.

7. We disclaim alike the right and the desire to impose our convictions (religious) on any of our subjects. We declare it to be our royal will and pleasure that none be in anywise favoured, none molested or disquieted by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoy in all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

8. And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge.

9. We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors and we desire to protect them in all rights connected therewith, subject to the enquitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights and customs of India.

10. When, by the blessing Providence, internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the Government for the benefit of all our subjects resident therein. *In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward....*[1]

[1] Emphasis ours.

CHAPTER 5

# NATURE OF THE INDIAN GOVERNMENT UNDER THE CROWN

THE MOST important office that came into being with the assumption of direct responsibility for the Government of India by the Crown was that of the Secretary of State for India. As a result, all powers, legislative, administrative and financial, came to be centralised in the Secretary of State for India in Council on behalf of the Crown. In India, the administration was headed by the Governor-General in Council who exercised a rigid control over the local government in the Provinces which were headed by Governors, Lieutenant-Governors or Chief Commissioners on the basis of the area or importance of the Province concerned. These Governments had no independent powers but were the agents of the Governor-General in Council. The Provinces were divided into Districts each of which was headed by a Collector-Magistrate or the Deputy Commissioner. This fourtier system of administration can best be described as a 'Centralised Bureaucracy'. It is characterised by a hierarchy or gradation of officers, the lower ones being the agents of, and, therefore, entirely responsible to, those above them.

At the apex of this bureaucratic hierarchy stood the Secretary of State for India and his Council responsible to the British Parliament. Below him was the Viceroy and the Governor-General of India in Council, who was the 'man on the spot' to head the administration. Then came the Governors, Lieutenant-Governors, and Chief Commissioners, and finally the Collectors or Deputy Commissioners. The whole system from top to bottom was well-knit, highly centralised and behaved like an unbreakable steel frame with all the charateristics of a full-fledged autocracy. It may be appropriate here to deal in some detail with the role of each important office in this complex system.

## *The Secretary of State in Council*

By the Act of 1858, the Secretary of State was charged with the

'superintendence, direction and control of all the acts, operations and concerns which in anywise relate to the Government or revenues of India.' In this task he was assisted by a Council composed of men who had expert knowledge and experience of India. Although originally the Council was intended to be a check on the Secretary of State, in course of time, his position became one of overwhelming authority. The only authority that could effectively control the Secretary of State was Parliament. In theory, its authority over the Indian Government was supreme.[1] But in practice, it left everything to the Secretary of State as its agent.[2]

According to the Act of 1858, the Council was composed of 15 members of whom 8 were appointed by the Crown and seven were elected. In the first instance, the seven were elected by the Court of Directors and thereafter by the Council itself. They held office during good behaviour but were removable on an address by both Houses of Parliament. This procedure was devised to remove the possibility of their becoming party-men and strain their relations with the Secretary of State, especially after a change of Ministry.

The Council was armed with two powers to check the abuse of his authority of the Secretary of State. (1) When the Secretary of State acted in opposition to a majority of the Council; he was to state and place on record the reasons why he set aside the majority view. Similarly a Councillor whose advice was not adopted could also place on record his reasons for the advice. (2) The Secretary of State was obliged to call a meeting of the Council at least once a week. (3) The Secretary was bound to accept the majority view of the Council (*i*) in the case of the election of members to his Council, and (*ii*) in the matter of expenditure of the revenues of India. (4) The Secretary was also obliged to place before the Council all despatches to and from India. In urgent and secret matters (e. g. was, defence, etc.), however, he was authorised to send instructions without prior intimation of the Council. It was in spite of these checks that the office of the Secretary of State became too powerful to reduce the Council to a level of virtual impotency.

The indifference of Parliament and the impotency of the Coun-

[1] *Montagu-Chelmsford Report*, para 33.

[2] Ramsay Macdonald once said: 'Parliament has not been a just or watchful steward. It holds no great debates on Indian questions; it looks after its own responsibilities with far less care than it looked after those of the Company; its seats are empty when it has its annual saunter through the Indian budget.'

cil left the Secretary of State master of the field. He came to exercise complete control over the entire range of Indian administration. This control was based upon the above mentioned theory that the supremacy of Parliament over the affairs of India was absolute. It might seem odd that a Secretary of State sitting at a distance of over 6,000 miles from India should be expected to exercise effective control over the multifarious activities of a gigantic administrative organisation in India. Yet such was the fact; and the ingenious methods adopted by successive Secretaries in this regard involved the systematic interference even in comparatively small matters affecting the working of the Government of India. Governors-General who protested were told of the great principle that underlay the whole system, namely, that 'the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself'.

Thus, the control exercised by the Secretary of State was aot only absolute but also embraced every field of activity of the Indian Government, legislative, administrative and financial. How bitter almost every Governor-General was over this extreme interference can be seen from the following extract from a private letter written by Lord Minto:

> I used to imagine that the Secretary of State aimed only at directing great principles of Indian policy, and that the administration of the country rested with the Government of India, but here has been interference in everything. It only results in intense worry to the Viceroy, for, do what he will, the Secretary of State cannot administer India.[3]

### *The Governor-General in Council*

We have already seen how with the implementation of the Regulating Act a central authority was created in India in the office of the Governor-General of Bengal which controlled the Presidencies of Madras and Bombay in certain matters. The process continued steadily over a period of sixty years and by the passage of the Act of 1833, it had reached its consummation. It was indeed difficult at that time to draw a line of demarcation between the functions of the Central and the Provincial Governments. The Central Government was fully competent to deal with any matter which

[3] Sir Malcolm Seton, *India Office*; p. 81.

was under the immediate management of the Provincial Government. To what extent it was actually exercising its power calls for some detailed consideration.

In the financial field, the control of the Governor-General in Council over the provincial administration was absolute. This was the result of a specific provision in the Act of 1858 by which the entire revenues of the country were vested in the Governor-General in Council; the Provincial Governments could not raise or spend even a rupee on their own account. Although a real attempt was made by Lord Mayo (1870) and his successors to establish a system of Provincial Settlements of which each Province could expect to have adequate funds to maintain a certain standard of administration, its tutelage to the Government of India was still unqualified. There were four main ways by which this financial control was exercised:

(*a*) Careful scrutiny of all provincial budgets which required sanction from the Centre.
(*b*) Control of expenditure by a series of financial codes of instructions.
(*c*) Restrictions on the imposition of new provincial taxes which always required Central sanction.
(*d*) Prohibition to borrow money either in India or England for capital expenditure. Whenever the Provinces proposed borrowing, the Government of India advanced money to them.

The control by the Centre over provincial legislation was a corollary to the dependence of the Government of India on the Secretary of State. There was no line of demarcation between the respective legislative authority of the Centre and the Provinces. The result was the complete mastery of the Governor-General in Council over the entire legislative field. The Provinces were allowed to enter the field only with prior sanction from the Central Government and the Secretary of State. Further, no Provincial Bill could become an Act without the assent of the Governor-General.

In the administrative field too, the control was very extensive. On the one hand, it was the direct result of the financial control. On the other, it was a consequence of the policy of maintaining a uniform administrative system all over the country. The Public

Services who were in charge of the administration were recruited by the Secretary of State and their conditions of service were determined by him. Finally, it was the duty of the Government of India to lay down policies of reform and progress of the administrative system, in the form of Resolutions. The Provinces only acted as agents of the Centre in implementing these resolutions.[4]

The foregoing analysis will show that the Government of the country was one. The Provinces, despite their enjoying considerable powers, were in reality the 'agents' of the Central Government. The extent of provincial powers and the nature of control by the Centre were not the product of a constitutional demarcation of Central and local powers as obtains in a federal system but were the result of gradual administrative evolution. The system as a whole was over-centralised and had all the evils of such a system. It sapped the initiative of the local governments, made them subservient to the various departments of the Central Government and stood in the way of the interests of the people and their participation in the Government even at lower levels. The most radical of these evils may be specifically listed as follows :

(*a*) The decadence of the indigenous institution of self-government—the village panchayat.
(*b*) Grouping of provinces without regard to wholesome principles such as racial, cultural or linguistic affinities.
(*c*) Enormous growth in public taxation and expenditure, particularly the growth of military expenditure.
(*d*) Insufficient attention given to nation building activities such as education, public health, irrigation, co-operation, etc.
(*e*) Neglect of indigenous industry and agriculture, resulting in extreme poverty often culminating in epidemics and famines.
(*f*) Excessive curb on the political activities of the people by imposing restrictions upon the freedom of the press, speech and movement.

Gokhale described the inevitable failure of the British bureaucracy in India thus :

> The efficiency attained by a foreign bureaucracy uncontrolled by public opinion, whose members again reside only temporarily in the land in which they exercise official power, is bound to be of a strictly limited character, and

[4] *Report of the Royal Commission on Decentralisation*, Chapter II.

it can never compare with that higher and true efficiency which is possible only under a well-regulated system of self-government. The present form of government of India is a strongly centralised bureaucracy in which the men at the Centre held office for five years only. They then leave the country, carrying away with them all the knowledge and experience of administrative matters acquired at the expense of the country, and their places are taken by new men, who, in their turn, retire similarly after five years. As things are, there is no one ever in the Government who is permanently interested in the country as only its own people can be interested. One result is that the true well-being of the people is systematically subordinated to militarism and the service interest of the English mercantile classes ; and though under such a system peace and order may be maintained, and even a certain amount of efficient administration secured, the type of efficiency is bound to remain a low one always. Moreover, it is clear that even such efficiency of administration as has been attained in the past by the existing system is bound to suffer more and more owing to the growing antagonism of the governed to that system. No man, for instance, ever laboured more strenuously for more efficiency than Lord Curzon, and yet, never was discontent deeper and more widespread than when he left India, and no Viceroy of recent times has had to succeed to a greater legacy of difficulties than Lord Minto.[5]

## *Local Governments*

The nine major Provinces and six minor ones which composed the British Indian territory at the time power was transferred in 1858 could be classified under five different categories.

### (1) *The Presidencies*

Madras, Bombay and Bengal were the three Presidencies. Of these, Madras and Bombay were established even prior to the Government of India and had enjoyed the privilege of a form of Government (Governor-in-Council) similar to that of the Central Government at Calcutta. The Governments of the Presidencies lost their original status ; yet they had been enjoying a substantial measure of autonomy in spite of the full-fledged system of centralised bureaucracy. They had the right to correspond direct with the Secretary of State except in financial matters. They could appeal to him against the orders of the Governor-General in Council. The Presidency Governors were extraordinary members of the Governor-General's Council if meetings of the Councils happened to be held within the Presidency. They also enjoyed

[5] G. K. Gokhale, *Speeches and Writings*, p. 989.

discretionary power in filling up important offices under them.

### (2) *Lieutenant-Governorships*

There were four Lieutenant-Governor's Provinces which were all constituted by Acts of Parliament. The earliest of these was North-West Province (1835) followed by Bengal (1854), Punjab (1859) and Burma (1897). The Lieutenant-Governors were appointed by the Governor-General subject to the approbation of the Crown. The extent of their authority was declared by the Governor-General in Council.

#### *Central Provinces and Assam*

Each of these was administered by a Chief Commissioner as a delegate of the Governor-General who was competent to give all necessary orders and directions for its administration. In practice, however, the powers delegated to him were as wide as those of a Lieutenant-Governor.

#### *Baluchistan and North-West Frontier Province*

These two formed a group by themselves. They were administered by Chief Commissioners who were also agents of the Governor-General in respect of political relations in the adjoining tribal territories. They were, in fact, more directly under the control of the Government of India, acting through its Foreign and Political Departments.

#### *Minor Administrations*

Under this category came Coorg, Ajmere, Andaman and Nicobar Islands and Delhi. They were administered either by a Resident in Mysore (in the case of Coorg) or by an Agent of the Governor-General (as in the case of Ajmere) or by a Chief Commissioner (as in the case of the rest).

The failure of the highly centralised British bureaucracy in India and its evil effects had already created considerable criticism both in India and in Britain. Certain portions of the Queen's Proclamation of 1858 reveal the awareness of these by the British Govern-

ment and even its eagerness to remedy them. It was also evident that the remedies lay in the adoption of a new policy embodying two principles, decentralisation and democratisation in administration. Unfortunately, however, the process was too slow and the degree of change was too little to produce any dramatic result in the desired direction. We may now turn our attention to these measures which began with the passing of the Indian Councils Act, 1861.

CHAPTER 6

# THE PROCESS OF DECENTRALISATION

## *The Indian Councils Acts*

THE REGULATING ACT had initiated the process of centralisation which culminated in the Act of 1833. The Indian Councils Act of 1861 inaugurated an opposite process, a process of decentralisation. It was indeed the primary charter of the Indian legislatures of the twentieth century.

There were at least four important defects in the existing system which the Indian Councils Act of 1861 sought to remedy. First, the Presidencies of Madras and Bombay bitterly complained of the incessant interference and the preponderance of voice which the Governor-General in Council seated at Calcutta exercised. Secondly, the vast extent of territory for which a single Council legislated made it impossible for matters of local importance to be handled with adequate local information and experience. Thirdly, Council had become a sort of debating society or petty Parliament, and arrogated to itself the right of enquiry into and redress of grievances. Finally and, above all, the terrible events of 1857 brought home to the Government the dangers arising from the entire exclusion of Indians from association with legislation in the country.

Lord Canning, the then Governor-General who took the initiative and Sir Charles Wood, the Secretary of State, who co-operated with Canning, were responsible for the passing of the Indian Councils Act of 1861. From a constitutional point of view, the Act is important for two main reasons: First, it initiated a process, however, rudimentary and utterly unsatisfactory it might be, of Indian association in legislation. Secondly, it laid the foundations of a policy of legislative devolution which gave more and more of legislative function to the Provinces. The main provisions of the Act are as follows :

1. Legislative power was restored to the Councils of Bombay and Madras and new Councils were allowed to be established in other Provinces. Thus a Council was established for

Bengal in 1862, North-Western Province in 1886 and Burma and the Punjab in 1897. There were, however, rigid restrictions on the legislative powers of the Provincial Council. Previous sanction of the Governor-General was made necessary for legislation by local Councils in certain cases. Further in every case a law passed by the local Council and assented to by the Governor required, in addition, the assent of the Governor-General for its validity.

2. In order to remove the irksome interference of the Councils in the functions of the executive, it was specifically provided that they would confine themselves to legislation only.
3. The Executive Council of the Governor-General was enlarged by the addition of a fifth member who was to be a jurist. It was also provided that at least three of the members belonged to the Civil Service in India and the fourth a barrister. The Secretary of State retained the power to appoint the Commander-in-Chief as an extraordinary Member. Further, a Governor or Lieutenant-Governor could be coopted as Member if the meeting of the Council was held in a Province.
4. The Act empowered the Governor-General to make rules for the more convenient transaction of business in the Council. It was under the authority of this power that Lord Canning introduced, for the first time in India, the portfolio system and its functioning in a coordinated manner.
5. The Act enlarged the Central Council for purposes of legislation by the addition of not less than six and not more than twelve additional members. These members were nominated for a period of two years and it was provided that at least half of them were to be *non-officials*. Explaining the importance of this measure, Sir Charles Wood, the Secretary of State, observed in the House of Commons: "There are two modes of legislation: one in which the Executive alone makes laws and the other in which laws are made by a representative body. Though the former was too primitive to be adopted, the latter had difficulties of its own. Everyone who considers the conditions of India will see that it is utterly impossible to constitute a representative body in that country. You cannot possibly assemble, at one place in India, persons who shall be the real representatives of the

various classes of the native population of that Empire". In the absence of representative bodies, the Executive Council of the Governor-General was enlarged by the addition of a few non-officials—Indians as well as Europeans. In those days, it was not easy to find in India qualified persons familiar with Western methods of government. Hence the kind of leaders the Act had in view were Indian Rajas or their Diwans or big land-holders or retired officials of high rank. Perhaps it was impossible even to dream of in those days that this very same body was to become in course of time a more representative body of the Indian people and which would claim a substantial measure of control over the Executive.

6. The Act had also conferred power on the Governor-General to create new provinces for legislative purposes and to appoint Lieutenant-Governors for them. He was also empowered to make territorial adjustments between different provinces.

## *The Indian Councils Act of 1892*

*Background*

The political situation in the country during the seventies and eighties of the last century was almost explosive although not comparable in intensity to what it was since the twenties of this century. The Councils established under the Act of 1861, which associated a few Indians in their work, soon proved inadequate to satisfy Indian aspirations. Economic conditions were steadily deteriorating and scarcity of foodgrains became acute in several parts of the country. With the famine of 1877 there was widespread and mounting discontent. Englishmen like Hume, the first President of the Indian National Congress, believed that the masses were seething with discontent and it was likely that some educated young men would organise and lend them as a national revolt. Perhaps with a view to preventing this as well as saving the British Administration in India that he took the lead to form the Indian National Congress in 1885 as an all-India organisation to rally political opinion through moderate and more constructive channels. In any case, the formation of the National Congress had a great

impact on the social and political scene.

The newly-established Universities of Calcutta, Madras and Bombay had considerably contributed to the political awakening of India. They produced an increasing number of Indians qualified by education and experience in public affairs who demanded an increasing share in the government and administration. There were also other forces which were at work on the Indian scene which produced a cumulative impact on the British rulers to reform the existing system.

The chief factors which gave rise to the movement in the eighties have been beautifully grouped together and dealt with by Gurmukh Nihal Singh under the following six heads:[1]

1. Inspiration of political ideals of the West.
2. Religious revival and faith in the ancient glory of India.
3. Economic discontent and disappointment at the non-fulfilment of British promises.
4. The influence of the Indian press and vernacular literature.
5. The development of the means of communication and the holding of Imperial durbars.
6. The increase in feelings of racial bitterness due to the arrogant and insolent attitude of the ruling race, the blundering administration of Lord Lytton and the display of violent temper and organised scurrilous propaganda carried on by Europeans and Anglo-Indians over the ill-starred Ilbert Bill.

A clear lead to the demand for greater share in the government and administration was given even in the first session of the Indian National Congress (1885) by passing a resolution expressing grave dissatisfaction at the existing system of government and asking for "the reform and expansion of the...Councils by the admission of a considerable proportion of elected members" as well as enlarging the scope of their powers. Although the proceedings of the Congress were looked upon with sympathy by the Government, within three years the attitude had undergone a radical change. Lord Dufferin characterised the Congress (1888) as representing

[1] G. N. Singh, *Landmarks in Indian Constitutional and National Development*, pp. 106-15.

only a "microscopic minority" of educated Indians. The Congress had to face many difficulties in holding its annual session of 1890 in Allahabad due to the unsympathetic attitude of the Government. Yet, the Viceroy, Lord Dufferin, felt that the time had come to take the demands of the Congress for reform seriously. He soon took measures by appointing a Committee of his Council and with its help drew up a plan for the enlargement of the Councils, the partial introduction of the elective principle and the liberalisation of their general character as political institutions.

The Secretary of State did not agree with all the recommendations of the Viceroy, particularly the elective principle. Nevertheless, a Bill was introduced in Parliament in 1890 to modify the existing system which was passed two years later and became the Indian Councils Act of 1892.

### *The Act of 1892*

The object of the Act was explained in the House of Commons by Mr. (later Lord) Curzon who was then the Under-Secretary of State. According to him the Act was intended to widen the basis and expand the functions of the Government in India ; and to give further opportunities than then existed to the non-official and native elements in Indian society to take part in the work of Government and in that way "to lend official recognition to that remarkable development both of political interest and political capacity that had been visible among higher classes of Indian society since the Government of India was taken over by the Crown in 1858".

The first major provision of the Act was to increase the number of additional members. As a result, the Governor-General's Council was to have not less then ten and not more than sixteen additional members. In the case of the Councils of Bombay and Madras, the corresponding increase was to be not less than eight and not more than twenty. The maximum for Bengal was fixed at twenty and that for North-West Province and Oudh at fifteen. The increase was characterised "as a very paltry and miserable addition" by the Opposition but defended by Curzon on the ground "that the efficiency of a deliberative body is not necessarily commensurate with its numerical strength."

The second major provision was the vesting of power in the Governor-General in Council with the approval of the Secretary

of State in Council to make regulations for nomination of additional members and to prescribe the manner in which such regulations should be carried into effect. Under this provision the Governor-General was competent to introduce a half-hearted system of elective principle. The intention of Parliament was explained as follows:

"Where Corporations have been established with definite powers upon a recognised administrative basis (e.g. Municipalities and District Boards), or where Associations have been formed upon a substantial community of legitimate interests, professional (e.g. Universities), commercial (e.g. Chambers of Commerce), or territorial (e. g. land-holders), the Governor-General and the local Governors might find convenience and advantage in consulting from time to time such bodies, and in entertaining at their discretion an expression of their views and recommendations with regard to the selection of members in whose qualifications they might be disposed to confide."

The Act also enlarged the functions of the Councils. In addition to their legislative function, they were allowed to hold a discussion on the annual financial statement. Further, the members were permitted to ask questions under prescribed rules imposing conditions which severely restricted the scope of such questions.

CHAPTER 7

# THE MINTO-MORLEY REFORMS

THE ADVENT of Lords Minto and Morley, the former as Governor-General and the latter as the Secretary of State, into the scene of the British Indian Government marks the dawn of a somewhat different attitude towards the solution of Indian problems. Basically this was due to the fact that they were both representatives of the Liberal Party which had come into power in England. Lord Curzon (Minto's immediate predecessor) who believed in the theory that better government in India depended on efficiency had proved himself a failure as Governor-General in spite of his many qualities both as a man and as an administrator. It was naturally clear by the end of his regime that a so-called better government was not the key to success in India if success was possible at all for an alien administration.

In fact, despite the many administrative measures and changes introduced between 1892 and 1909, the British Government in India, instead of becoming more popular, had been the target of severe attack by enlightened national opinion in the country. The period witnessed perhaps the worst form of distrust of Indians by the administration both in their ability and honesty. Conversely, leaders of Indian national movement came out in the open, more than ever before, to condemn the evils of foreign rule and demand greater share in the administration.

The period also witnessed the birth of a new spirit among the people to fight against the foreign rule and in course of it undergoes any sacrifice so long as that took them nearer their goal of self-government. The latter part of the period was particularly noteworthy for the new movement that it gave birth. Perhaps, it was Lord Curzon's regime which was responsible for the momentum with which these movements took shape. One of these showed the symptoms of an anarchist and terrorist movement committed to gain self-government through a gradual process. Leaders like Tilak and Aurobindo Ghosh may be grouped to belong to the former movement, while those like Bipin Chandra Pal and Lajpat Rai to the latter movement. Whatever might have been the

relative strength of each group, the Indian National Congress was already split into two opposing camps. One was known as Moderates and the other Extremists.

While the Moderates believed in peaceful and constitutional means to achieve their ends, the Extremists were ready to employ any means including violence, sabotage and armed rebellion. The British Government found themselves facing a new situation. It was not the Indian Princes, isolated or sporadically united, that they were facing but the people. In a desperate attempt to save the situation they rallied the Moderates. They also placated organised communal groups, the most notable being the Muslims who had found a new leadership under Aga Khan, as well as the Princes and the landlords.

In March 1906, Gopala Krishna Gokhale, the new President of the Indian National Congress, made a public appeal to Lord Minto, the new Governor-General. Among other things he emphasised in that appeal: "The question of the conciliation of the educated classes...raises issues which will tax the resources of British statesmanship. There is but one way in which this conciliation can be secured, and that is by associating these classes more and more with the government of their country." Later in the year, Gokhale visited England and met the new Secretary of State, Morley, and placed before him his views. Perhaps it was Gokhale's views to which Lord Morely was sympathetic which made him to state in the House of Commons:

> There are two rival schools of thought, one of which believes that better government of India depends on efficiency, and that efficiency is in fact the end of British rule in India. The other school, while not neglecting efficiency, looks also to what is called political concession.

As a preliminary to the grant of political concessions, a Royal Commission was appointed to enquire into the causes of and suggest remedies for centralisation. This was known as the Royal Commission on Decentralisation. The Commission had very limited terms of reference. It was not allowed to go into the relationship between the Secretary of State and the Government of India, or into questions of a purely political nature or questions of general policy. Its enquiry was confined to the relations between the Government of India and the Provinces, and how they could be simplified and improved by decentralisation; 'how the system

of government could be better adapted both to meet the requirements and promote the welfare of the different Provinces, and without impairing its strength or unity to bring the executive power into closer touch with local conditions.'

It is clear from the nature of the task entrusted to the Commission that the area with which it was concerned was administrative and not constitutional, administrative decentralisation and not political autonomy. Yet, its report had a considerable impact on the political and constitutional set-up. The Commission recommended changes on the basis of the following four considerations:

(*a*) The difficulties of administering a vast sub-continent from a single headquarter.

(*b*) The fact that the various Provinces contained diverse nationalities with different languages, traditions and interests.

(*c*) The desirability of creating a larger sense of responsibility in provincial and local authorities.

(*d*) The importance of strengthening the administration and educating the people by interesting the latter more largely in public affairs.

On the basis of the recommendations of the Commission, a Bill was introduced in Parliament in 1908 and was passed and became an Act in May 1909, popularly known as the Minto-Morley Reforms.

Although Lord Minto was interested to initiate a different trend in Indian politics, the early part of his regime witnessed one of the worst repressive periods of British rule in India. In a sense, it was the whirlwind which Curzon had fanned up during the latter part of his rule and which was shaking the whole country in its very foundations. It was perhaps impossible for Lord Minto, even if he wanted to do, to adopt an altogether different attitude. Hence what one witnessed during the first part of his rule was the progress of talks for constitutional reforms on the one hand and, at the same time, the unabated use of every type of repressive measures.

The Moderates among Indian political leaders, however, had entertained high hopes and had given their own interpretation to the statements of Morely and Minto. They were of the view that these statements were meant to disally opposition to the new mea-

sures in Britain. Indeed they hoped that the Reforms would result in "modifying the bureaucratic character of the Government and in offering the elected representatives responsible association with the administration." Gokhale, the most prominent among the Moderates, was of the view that "over finance, for the control of the Government of India, would be largely substituted the control of discussion and criticism in the Councils; that racial considerations would recede into the background and that the Indian view of questions would be effectively presented in the highest councils"; and that no legislation in the Provinces would be enacted which the non-official majorities did not desire, and "that the elected members would have all the opportunity that they needed of influencing the course of provincial business."

A short period of the working of the Reforms, however, was sufficient to disillusion leaders like Gokhale who said in August 1910: "Now, my Lord, we well know that once the Government had made up their mind to adopt a particular course, nothing that the non-official members may say in the Council is practically of any avail in bringing about a change in that course.[1]

The chief merit of the Act lay in its provisions to further enlarge the Councils and make them more representative and effective. These may be analysed under two main heads, Constitutional and Functional.

Constitutionally, the Councils were modified in three respects; (*i*) Numbers, (*ii*) Proportion of official and non-official members, and (*iii*) Methods of appointment or selection. We may examine these in some detail.

*Numbers*[2]

Under the Act of 1909 the numbers were doubled or more than double. For example, under the Act of 1892, the maximum number of additional members authorised was only sixteen for the Government of India. But under the Act of 1909, this was raised to sixty. In the same manner, the maximum number of additional members for the Presidencies of Madras, Bombay and Bengal was raised from twenty to fifty.

[1] Proceedings of the Imperial Legislative Council, Vol. XLIX, p. 29.

[2] See Table 1 on p. 44.

TABLE 1

COMPARATIVE STRENGTH OF THE LEGISLATIVE COUNCILS UNDER THE ACT OF 1892 AND 1909

| | *Maximum number of additional members under the Act of* 1892 | *Maximum number of additional members under the Act of* 1909 | *Total strength under the Regulations of* 1912 |
|---|---|---|---|
| India | 16 | 60 | 68 |
| Madras | 20 | 50 | 48 |
| Bombay | 20 | 50 | 48 |
| Bengal | 80 | 50 | 53 |
| Bihar and Orissa | | 50 | 44 |
| U. P. | 15 | 50 | 49 |
| Punjab | 15 | 30 | 26 |
| Burma | 15 | 30 | 17 |
| Assam | 20 | 30 | 25 |

*Note*: There was no Bihar and Orissa Province before 1912.

During the period 1905-12 Assam was joined to East Bengal, both being called Eastern Bengal and Assam.

*The Proportion of Official and Non-official Members*

Until 1909 the Legislative Councils had a majority of officials. But the Act of 1909 made a significant departure in this respect. According to this, the Governor-General's Legislative Council was still to be dominated by an official majority, but the proportion of non-officials increased substantially. In the Provinces, for the first time, a non-official majority was established. This was definitely a move in the direction of democratisation in an otherwise wholly bureaucratic set-up. It must be pointed out, however, that an un-official majority in the Provincial Councils was impotent to translate its will into action because of the overriding powers of the central majority.

*Methods of Selection*

Nomination was the practice until 1909. But the Minto-Morley Reforms, for the first time in British Indian administration, recognised the principle of indirect election. The Act enabled certain recognised bodies and associations to recommend candidates who, though there was no obligation to accept them, were

rarely rejected in practice. Further, it also provided for some members to be elected in accordance with regulations made under the Act with regard to the principle of representation. The Government accepted the position that (*i*) election by the wishes of the people is the ultimate end to be secured, whatever may be the actual machinery adopted for giving effect to it, and (*ii*) that in the circumstances of India, representation by classes and interests was the only practicable method of embodying the principle in the constitution of the Legislative Councils.[3]

The acceptance of the latter principle marks the beginning of communal (religious) electorates in India. Sir Charles Aitchison, a member of the Executive Council in 1892, had already expressed the idea that 'the division of the people into creeds and castes and sects with varying and conflicting interests rendered representation in the European sense an obvious impossibility'. This idea took practical shape under the Act of 1909 by the creation of separate electorates such as Muslims, Land-holders, Chambers of Commerce, etc. Although the evil potentialities of this provision did not unfold themselves clearly in those days, it was to become the greatest menace to national unity in later years.

### *Changes in the Functions of the Councils*

The Act of 1861 had strictly limited the functions of the Councils to the field of legislation. The Act of 1892 gave members the power to discuss the budget but not to move resolutions about it or to divide the Council. The Act of 1909 enlarged the scope of the functions of the Councils in three ways :

1. (*a*) To discuss the budget at length before it was finally settled ;
   (*b*) To propose resolutions upon it; and
   (*c*) To divide upon those resolutions.
2. The extended powers of the Councils went even beyond discussions on the budget and embraced almost all matters of public importance through resolutions and divisions taken. These resolutions, however, were not binding on the executive Government but only had the effect of recommendations.
3. The right to ask questions by members was enlarged and supplementaries were also allowed.

[3]See Table 2 on p. 48.

On the whole, the Minto-Morley Reforms were a great improvement upon the Act of 1892. Nevertheless, they failed to satisfy the aspirations of the people. First, the Councils were not truly representative of the people as a whole. Narrow franchise and indirect elections failed to instil in the members a sense of responsibility to the people. Secondly, the Councils had no real power in the field of legislation and finance. They were only debating bodies which aired certain criticisms. Thirdly, neither the subordination of the Provincial Governments to the Government of India nor that of the latter to the Secretary of State was relaxed. Finally, the Act had no answer to the demand for responsible government. In fact, Lord Morley was frank in this respect by openly declaring that he would have nothing to do with the Reforms if they were construed as a step towards the establishment of a parliamentary system of government in India.

It was, on the other hand, "to create a constitution about which conservative opinion would crystallise and offer substantial opposition to any further change." Both Morley and Minto desired to associate only such Indians with the administration of the country who would "oppose any further shifting of the balance of power and any attempt to democratise Indian institutions."

The position was not in any substantial way better in the case of the Provincial Councils, as the elected element was not in an effective majority anywhere and also because the final authority in almost all cases rested with the Government of India. The Minto-Morley Reforms thus failed to satisfy even the most moderate sections of political opinion in India.

What then was the purpose of the Reforms? They were an attempt to graft the principle of constitutionalism upon the existing autocracy of British rule. They were at best the outcome of the old conception which made the Government of India a benevolent despotism which might, as it saw fit for purposes of enlightenment, consult the wishes of its subjects. This was incapable of satisfying the Indian people and naturally, they were disillusioned.

Agitation against the foreign rule was steadily mounting and it had by now assumed many forms and unprecedented proportions. The Government bent upon crushing the mounting unrest followed a policy of ruthless repression accompanied by minor measures of reforms. Bengal was the spearhead of the agitation where on account of the repressive policy of the Government, the movement

went underground and it took a violent form indulging in arson, murder and organised dacoity. Many patriots sincerely believed that by indulging in this type of violent activity the British would be compelled to quit. They were, however, unaware of the fact that the country as a whole was not prepared to accept their way of thinking. In fact, in many other parts of the country the national organisations of a political nature were withering away for lack of real public support and inspired leadership. Tilak was already languishing in prison in far away Mandalay and Aurobindo Ghosh had gone into voluntary exile. Others were locked up in jails for varying terms of rigorous imprisonment. These were severe blows to the revolutionaries. As a result, the extremists had lost the great leadership that they enjoyed until then. The Moderates, on the contrary, were busily engaged in working the new reforms inaugurated under the Minto-Morley scheme. The Indian National Congress, which was still under the control of the Moderates, was satisfied with the passing of its annual resolutions making fervent appeals to the Government to relax its repressive measures and give more opportunities to Indians to participate in the administration. The Muslim League too followed a policy which was very much similar to that of the Congress. This might have been the reason why the two organisations came together and formulated a joint scheme of political and constitutional reforms at Lucknow in 1916. In any case the British became fully aware that the Indians irrespective of their political persuasions were thoroughly dissatisfied with the existing conditions.

TABLE 2

## COMPOSITION OF THE PROVINCIAL COUNCILS UNDER THE REGULATIONS OF 1912

| Name of the Council | Additional | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Nominated | | | | | | | Elected | | | | | |
| | *Ex-officio* | *Official* | *Non-official* | *Corporation* | *Mun. and Dist. Boards* | *University* | *Landholders* | *Planting Community* | *Mohom-medans* | *Ch. of Com.* | *Indian Commerce* | *Miscellane-ous* | *Total* |
| Madras | 4 | 16 | 5 | 1 | 9 | 1 | 5 | 1 | 2 | 1 | 1 | | 48 |
| Bombay | 4 | 14 | 7 | 1 | 8 | 1 | 3 | | 4 | 2 | 2 | | 48 |
| Bengal | 3 | 16 | 4 | 1 | 10 | 1 | 4 | 1 | 5 | 2 | 1 | 3 | 53 |
| Bihar and Orissa | 3 | 15 | 4 | | 10 | | 5 | 1 | 4 | | | 1 | 44 |
| U. P. | | 20 | 6 | | 13 | 1 | 2 | | 4 | 1 | | | 49 |
| Punjab | | 10 | 6 | | 6 | 1 | | | | 1 | | | 15 |
| Burma | | 6 | 8 | | | | | | | 1 | | | 17 |
| Assam | | 9 | 4* | | 4 | | 2 | 3 | 2 | | | | 25 |
| C. P. | | 10 | 7 | | 5 | | 2 | | | | | | 25 |

# CHAPTER 8

# THE GOVERNMENT OF INDIA ACT OF 1919

*Events Leading to the Passing of the Act*

THE DISILLUSIONMENT created by the Act of 1909 in the political atmosphere of India aggravated and reinforced the demand for self-government. The Indian people found that self-government would not descend upon them as a gift of the British. Meanwhile, they had a fairly clear idea of what was meant by self-government. As Gokhale remarked: 'The political philosophy and axioms of the West have become an essential part of Indian life, and when its education came to India it brought with it the politics of Nationality, Liberalism and Freedom'.

Events were moving fast both in India and abroad. The Report[1] of the Indian Decentralisation Commission of 1909 and the transfer of the Capital from Calcutta to Delhi (1911) were, indeed, significant developments. Indian aspirations were quickened by the outbreak of the First World War in 1914. Political theorists became active in formulating new schemes for India. One of the first was that of Gokhale.[2] Next came the scheme of Lionel Curtis of *The Round Table*,[3] which advocated 'Dyarchy'—a dual government in which political power was shared by British and Indian representatives. Mention should also be made of the scheme prepared by nineteen members of the Viceroy's Legislative Council, which was subsequently adopted by both the Indian National Congress and the Muslim League in 1916. Its main features were

[1] The Report dealt with the relationships between the Government of India and the Provincial Governments on the one hand and with the Provincial Governments and the local authorities on the other; and also between each ring of the official hierarchy and made a series of recommendations with a view to the relaxation of control by higher authorities and the simplification of administrative methods.

[2] Published posthumously in 1917, it advocated a substantial measure of self-government.

[3] The Round Table was an organisation founded in 1910, with branches in all parts of the British Empire and having for its object the dispassionate study of Imperial problems.

direct elections to Provincial Councils, the binding character of the Council resolutions on the Governor, a four-fifth majority of elected members in the Central Legislature, Indianization of half the membership in the Executive Council and the election of these members by the elected members of the Legislatures.

The discussions on these schemes and others were making the political atmosphere tense when on 20th August 1917 Montagu, the then Secretary of State, made the following announcement in the House of Commons :[4]

> The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the cooperation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

Soon after the announcement, Montagu visited India. Along with the Viceroy, Lord Chelmsford, he toured all over the country studying the Indian political problem. They published a joint report in July 1918 embodying their proposals, popularly known as the 'Montford' Report. A Bill on the basis of this Report passed by both the Houses of the British Parliament received Royal assent in December 1919 and became the Government of India Act, 1919.

The basic scheme of the Act embodied four general principles:

(*a*) Complete popular control, as far as possible, in the field of Local Government.

(*b*) The Provincial Governments to be in a large measure independent of the Government of India, and to be responsible in some measure to popular representatives.

(*c*) The Government of India to remain responsible to Parlia-

[4] Montagu on an earlier occasion, speaking from the opposition, characterised the Government of India as "too wooden, too iron, too inelastic, too anti-deluvian, to be of any use for the modern purposes we have in view." He was speaking on the Report of the Mesopotamian Commission.

ment; yet the Indian Legislative Council to be enlarged and popular representation and influence in it to be enhanced.

(*d*) The control of Parliament and the Secretary of State over the Government of India and the Provinces to be relaxed in proportion to the above changes.

As a preliminary to the transfer of more powers to the Provinces under the Act, it was thought desirable to standardize the Provinces themselves. Hitherto, there had been three categories of Provinces according as they were under Governors, Lieutenant-Governors or Chief Commissioners. Of these, the Chief Commissioners were at the head of relatively small and the less important Provinces. But Lieutenant-Governors were in charge of extensive areas. Under the new scheme, these were upgraded and placed on a par with the Governor's Provinces. The title of Lieutenant-Governor was abolished. The transfer of the Capital from Calcútta to Delhi prepared the way for the creation of this uniformity by distinguishing between the Central Capital and the Provincial Capital by locating them at different places. However, it must be pointed out that the Governors of the presidencies of Madras, Bombay and Bengal still enjoyed certain privileges which were not given to the Governors of the newly-created or upgraded Provinces. All the same, the standardization achieved was real.

We may now consider the extent of decentralization brought about by the Act. A term which was widely in use in those days, although in a loose way, to cover this aspect was 'Provincial Autonomy'. What did it mean? In the words of Sir Frederick Whyte, the first President of the Central Legislative Assembly :

> In current political controversy, it wrongly covers both the freedom of a Provincial Government from external control by the Government of India and the internal political conditions of representative and responsible government. The true meaning of the word lies in the former interpretation. A Province may enjoy provincial autonomy without what are commonly called free institutions. That is to say, in its true meaning provincial autonomy tells us nothing of the condition of the domestic Government prevailing in any particular Province or State.[5]

The whole tenor of the Act of 1919 supports this point of view. The extent of independent powers conferred upon the Provinces

[5] *India : A Federation* ? pp. 36-37.

can be divided into broad areas, namely, finance, legislation and administration. These had been carefully defined in what are called 'Devolution Rules', which were an integral part of the Reforms Scheme. The underlying principle of these Rules was to distinguish between the spheres of the Central and Provincial Governments. In practice, this meant a classification of the functions of Government into 'Central' and 'Provincial'.

The classification was made on the following basis: All subjects of all-India importance were brought under the category of 'Central'. Where a subject was of predominantly local interest, it was categorized as 'Provincial'. However, the division was not as rigid as that under a federal constitution. Moreover, the Central Legislature was not precluded from dealing with provincial subjects.

### *Financial Devolution*

The subject of financial devolution may be considered under two heads :

(*a*) Provincial contribution to the Government of India.
(*b*) Relaxation of control over the Provinces.

The first step towards minimizing Central control over provincial contributions was taken by a complete separation of the Central and the provincial sources of revenue. According to this, land revenue, excise, irrigation and stamps were made exclusively provincial items. The resultant loss of income to the Central Government was made good by the method of provincial contributions to the Central Government.[6]

Before the Reforms, the provincial budgets were included in the budget of the Government of India. But the Act provided for almost complete freedom to the Provinces in this matter. The Central Government wanted thereafter only certain information with regard to the financial position of the Provinces. Further, the taxation powers of the Provincial Council were enlarged by doing away with the requirement of the previous sanction of the Governor-General.

### *Legislative Devolution*

As has already been pointed out, legislative devolution was brought

[6] See the *Report of the Meston Committee* which went into this question in great detail.

about by drawing up separate items of legislation for the Centre and the Provinces. The old requirement of previous sanction from the Governor-General to initiate legislation was removed in the case of those items which were classified as Provincial. These covered a fairly wide range of subjects under which the peculiar social and local problems of every Province could be dealt with. The Provincial Legislatures were also empowered to make laws for the 'peace and good government' of the Provinces.

The Central control over provincial legislation that still remained was two-fold. First, an authentic copy of every Act to which the Governor had given his assent, had to be sent to the Governor-General who might or might not give his assent to it. If the Governor-General gave his assent, then a copy of the Act had to be sent to the Secretary of State who, again, might or might not give his assent to it.

### *Administrative Devolution*

Administrative devolution was a natural by-product of financial and legislative devolution. Numerous orders were passed, mostly of a technical character, which had the effect of giving the Provincial Government substantial power in the field of administration.

With this background of the devolution of powers we may now examine the structural changes the Reforms introduced in the Provinces.

### *The Provincial Executive : Dyarchy*

The new structure of the Provincial Executive was designed to meet two conditions : responsibility to popular representatives, and the political backwardness of the people and the administrative inexperience of their leaders. These are patently conflicting in nature. And yet they were provided for in the device of Dyarchy, a device by which the functions of the Provincial Government were divided between those which were to be given to popular control and those which must continue to remain in official hands. The former were called 'Transferred Subjects' and the latter 'Reserved Subjects'. The Governor-in-Council was in charge of the Reserved Subjects, and the Governor acting with the Ministers of the Transferred Subjects. The guiding principle of this division was to include

within the Transferred List those departments which afforded most opportunities for local knowledge and social service, those in which Indians had shown themselves to be keenly interested, those in which mistakes that might occur, though serious, would not be irremediable, and those which stood most in need of development. But departments primarily concerned with law and order, land revenue or tenant rights were not to be transferred.

The administration of the Reserved Subjects was entrusted to members of the Governor's Executive Council, appointed by the Crown for a period of five years and receiving a fixed pay. They were not responsible to the Provincial Legislature.

The Transferred Subjects were entrusted to Ministers who were to be nominated by the Governor from among the elected members of the Provincial Council and were to hold office during his pleasure. Their salary was to depend on the vote of the Legislature. In practice the Provinces of Bengal, Bombay and Madras had four Executive Councillors and three Ministers ; in Bihar and Orissa three Executive Councillors and two Ministers and in the remaining Provinces two Councillors and two Ministers were appointed.

The Governor's role as the link between the two halves of the Executive was not only pivotal but also complex. He was to lead the two wings of the Government which were operating in two distinctly separate fields and responsible to two masters. As such, he was obliged not only to yoke the Councillors and the Ministers to the chariot of Provincial Administration but also to drive it. To what extent was this difficult operation successful will be examined presently.

### *The Legislature : The Provincial Councils*[7]

While the Minto-Morley Reforms envisaged the principle of 'associations' of the people in the Provincial Government, the ten years that preceded the Montford Reforms constituted a kind of probation for the new principle which it envisaged, namely, responsible government, however rudimentary it was. The Legislative Councils, therefore, had to be reformed with regard to their constitution and functions, in conformity with that principle. These changes can be briefly examined under the following heads:

[7] See Table 1 on p. 55.

TABLE 1

## COMPOSITION OF THE PROVINCIAL COUNCILS UNDER THE ACT OF 1919

| Province | Elected members | | | | | | | | | | | | | | Nominated members | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General electorates | | | | Communal electorates | | | | | Special electorates | | | | | | |
| | Non-Mohammedans (Rural) | Non-Mohammedans (Urban) | Mohammedans (Rural) | Mohammedans (Urban) | Europeans | Anglo-Indians | Indian Christians | Sikhs | | University | Landholders | Commerce and Industry | Officials (nominated and ex-officio) | Non-officials | Total |
| Bombay | 35 | 11 | 22 | 5 | 2 | | | | | 1 | 3 | 7 | 20 | 5 | 111 |
| Madras | 56 | 9 | 11 | 2 | 1 | 1 | 5 | | | 1 | 6 | 6 | 23 | 6 | 127 |
| Bengal | 35 | 11 | 33 | 6 | 5 | 2 | | | | 1 | 5 | 15 | 20 | 6 | 139 |
| United Provinces | 52 | 8 | 25 | 4 | 1 | | | | | 1 | 3 | 3 | 18 | 5 | 123 |
| Punjab | 13 | 7 | 27 | 5 | | | | 12 | | 12 | 1 | 4 | 16 | 6 | 93 |
| Bihar and Orissa | 42 | 6 | 15 | 3 | 1 | | | | | 1 | 5 | 3 | 26 | 7 | 103 |
| Central Provinces | 31 | 9 | 6 | 1 | | | | | | 1 | 3 | 3 | 10 | 6 | 70 |
| Assam | 20 | 1 | 12 | | | | | | | | | 6 | 9 | 5 | 53 |

1. *Numbers*

Whereas the Act of 1909 laid down the maximum number, the Act of 1919 specified the minimum. Further, this minimum itself was substantially bigger than the maximum under the previous Act. For example, as against a maximum of 50 in the major provinces, the new councils had a minimum of over 100 (Madras 118, Bombay 111 and Bengal 125). In most cases, the reconstituted Councils had more members than the prescribed minimum.

2. *Proportion of Officials and non-Officials*

In the new Councils at least seventy per cent of the members were to be elected, and not more than twenty per cent could be officials. The Governor's powers to nominate non-officials was thus restricted to ten per cent.

3. *The Method of Selection*

Uniform constituencies based upon territory was considered unsuited to Indian conditions. Hence, the constituencies were designed to represent particular communities or special interests such as the Universities, Landholders, Chambers of Commerce, etc. Thus communal (religious) representation became an integral part of the Indian political system.

4. *Qualifications for Voters*

The right to vote even in a general constituency depended on a number of qualifications such as, (*i*) residence in that constituency for a minimum period of time; (*ii*) ownership or occupation of a house which had a minimum rental value; (*iii*) payment of a minimum municipal tax or income-tax or some other tax or the receipt of a military pension. Owing to these qualifications, the number of eligible voters was extremely small.

5. *Duration of the Council*

The Act fixed the normal life of the Council as three years. But it could be dissolved earlier by the Governor. If the Council was

dissolved, a new Council was to be elected within six months, after the dissolution.

6. *Functions of the Councils*

(*a*) Interrogatory : The members had the right to ask questions and supplementaries on a variety of subjects.

(*b*) Deliberative : The members could move resolutions to ventilate popular grievances. They could also move for adjournment for discussing matters of urgent public interest.

(*c*) Legislative : Although there were a number of restrictions, the Councils had a certain measure of power to take up consideration of bills dealing with a variety of subjects.

(*d*) Financial : The financial powers of the Councils were limited. Nevertheless, they were considerably more than what they enjoyed under the Act of 1909. They had the power of general discussion as well as voting on demands for grants, although the latter was confined to a small number of items.

The essential weakness of the Councils, inspite of all these enhanced powers, lay in the special powers of the Governor with regard to both legislation and the budget. In the field of legislation, his powers were both positive and negative and had reference to both essential and non-essential legislation. In the matter of the budget, he had the power to authorize such expenditure as might in his opinion be necessary for the safety or tranquillity of the Province. Further, in the case of a grant refused or reduced by the Council, the Governor could restore it by certifying the demand as essential to the discharge of his responsibility for the subject. Thus, despite the acceptance of the principle of responsible government, the Act of 1919 in actual operation did not bring that principle into practice.

*The Pattern of the Central Government*

The Central Government had not undergone any change in its basic principles. The Government of India was still responsible to the British Parliament through the Secretary of State. From a popular point of view, it was still an unrepresentative government. Nevertheless, there were certain changes brought about by the Act, which should be noted.

TABLE 2

STATEMENT SHOWING THE CONSTITUTION OF THE LEGISLATIVE ASSEMBLY UNDER THE ACT OF 1919 (excluding the President)

| | *Nominated Members* | | | *Elected Members* | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | *Officials* | *Non-Officials* | *Total* | *General* | *Muslim* | *Sikh* | *Land Owners* | *Europeans* | *Indian Commerce* | *Total* | *Grand Total* |
| Government of India | 12 | | 12 | | | | | | | | 12 |
| Madras | 2 | 2 | 4 | 10 | 3 | | 1 | 1 | 1 | 16 | 20 |
| Bombay | 2 | 4 | 6 | 7 | 4 | | 1 | 2 | 2 | 16 | 22 |
| Bengal | 2 | 3 | 5 | 6 | 6 | | 1 | 3 | 1 | 17 | 22 |
| United Provinces | 2 | 1 | 3 | 8 | 6 | | 1 | 1 | | 16 | 19 |
| Punjab | 1 | 1 | 2 | 3 | 6 | 2 | 1 | | | 12 | 14 |
| Bihar and Orissa | 1 | 1 | 2 | 8 | 3 | | 1 | | | 12 | 14 |
| Central Provinces | 1 | | 1 | 3 | 1 | | 1 | | | 5 | 6 |
| Assam | 1 | | 1 | 2 | 1 | | | 1 | | 4 | 5 |
| Burma | 1 | | 1 | 3 | | | | 1 | | 4 | 5 |
| Berar | | 2 | 2 | | | | | | | | 2 |
| Ajmer | | 1 | 1 | | | | | | | | 1 |
| Delhi | | | | 1 | | | | | | 1 | 1 |
| TOTAL | 25 | 15 | 40 | 51 | 30 | 2 | 7 | 9 | 4 | 103 | 143 |

Hitherto, the strength of the Executive Council of the Governor-General had been fixed at seven, six ordinary members and one extraordinary. The Reforms removed this rigidity giving the Council greater elasticity both in the size and the distribution of Indians in the Council from two to three. A detailed scheme for redistributing the departments of the Government of India was adopted by Lord Chelmsford himself and was implemented by April 1923 by his successor, Lord Reading. According to this, there were nine departments, i.e. Foreign and Political, Railways and Commerce, Industries and Labour, Education, Health and Lands, Army, Home, Legislative, Finance and Ecclesiastical. The Viceroy was directly in charge of the Foreign and Political Department. The Ecclesiastical Department and Railways and Commerce were placed under the charge of one member. Each of the remaining six departments was entrusted to one member. Thus, there was a total of seven members in addition to the Viceroy in the Executive Council.

*The Legislature*

Under the Reforms, a bicameral legislature—the Indian Legislative Assembly and the Council of State—was established. The Council had a maximum of sixty members of whom not more than twenty could be officials, and not less than thirty were to be elected. The Assembly had a minimum strength of 140 members.[8] At least five-sevenths of these were to be elected and at least one-third of the remaining (nominated) were to be non-officials.

The method of indirect election to the Indian Legislative Council, which had been prevalent under the Act of 1909, was abolished and, for the first time, direct election was introduced to fill a large majority of the seats in the Assembly. The election, however, recognized the principle of communal representation. Similarly, industry and commerce and landholders were also given special representation.

The composition of the Council of State was complex.[9] A variety of special interests was given representation. The diversity of composition was secured also by keeping the franchise fairly high to secure the representation of the hereditary aristocracy and the mercantile aristocracy. The franchise was also bestowed for special personal quálifications such as past or present membership of a

[8] See Table 2 on p. 58 for the composition of the Assembly.

[9] See Table 3 on p. 60

TABLE 3

STATEMENT SHOWING THE CONSTITUTION OF THE COUNCIL OF STATE UNDER THE ACT OF 1919
(excluding the President)

| | *Nominated Members* | | | *Elected Members* | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | *Officials* | *Non-Officials* | *Total* | *General* | *Muslim* | *Sikh* | *European Commerce* | *Total* | *Grand Total* |
| Government of India | 12 | | 12 | | | | | | 12 |
| Madras | 1 | 1 | 2 | 4 | 1 | | | 5 | 7 |
| Bombay | 1 | 1 | 2 | 3 | 2 | | 1 | 6 | 8 |
| Bengal | 1 | 1 | 2 | 2 | 2 | | 1 | 6 | 8 |
| United Provinces | 1 | 1 | 2 | 3 | 2 | | | 5 | 7 |
| Punjab | 1 | 2 | 3 | 1 | $1^1/_2$ | 1 | | $3^1/_2$ | $6^1/_2$ |
| Bihar and Orissa | 1 | | 1 | $2^1/_2$ | 1 | | | $3^1/_2$ | $4^1/_2$ |
| Burma | | | | 1 | | | 1 | 2 | 2 |
| Central Provinces | | | | 2 | | | | 2 | 2 |
| Assam | | | | $^1/_2$ | $^1/_2$ | | | 1 | 1 |
| Delhi | 1 | | 1 | | | | | | 1 |
| TOTAL | 19 | 6 | 25 | 19 | 10 | 1 | 3 | 34 | 59 |

legislative body or local authority, being Fellow of a University, etc.

Just as in the case of the Provincial Legislatures, the Indian Legislature too had four different types of functions; (*i*) Interrogatory, (*ii*) Legislative, (*iii*) Financial and (*iv*) Deliberative. With regard to the first and the last, the powers of the Central Legislature were similar to those of the Provincial Legislature. There were, however, important differences between the two with respect to legislation and the budget.

In the legislative field, the powers of the Council of State were co-ordinate with those of the Assembly. Since the Government could always depend on a majority of the Council to support its measures, the popular majority of the Assembly could not force its will against the Government in any matter of legislation. With respect to the budget, a large number of items were categorized as non-votable; the Legislature was not even allowed to discuss them. Discussion was allowed on the remaining items but even here, the Council dominated by officials could flout the will of the Assembly.

On top of all these were the special powers of the Governor-General in the fields of legislation and supplies. When he found himself in conflict with the Indian Legislature, he had at his disposal a number of devices to flout the legislative will. He could refuse leave to introduce certain bills where such leave in advance was necessary. Even if the Legislature rejected a bill recommended by him, he could certify that it was essential for the safety, tranquillity and interests of British India and it would become an Act on the signification of his assent or when he signed it. The only check upon this unqualified power of the Governor-General lay in the hands of the British Parliament before which every such Act had to be laid at least eight days before receiving Royal assent. The Governor-General could also refuse his assent to bills passed by the Legislature, whenever he considered it necessary. In the financial sphere too, the Governor-General had absolute powers to restore, if necessary, any grants that had been reduced or rejected by the Assembly. In practice, the Governor-General had been liberally making use of these overriding powers in the face of a hostile Assembly. On the whole, the Reforms proved totally inadequate to satisfy the popular demand for responsible government at the central level and, that being so, the popularly elected Indian

representatives in the Assembly were almost invariably hostile to the Government in all the discussions. In the words of C. R. Das, the Swarajists[10] who went into the Assembly were there not to work it but to wreck it from within.

### *The Failure of Dyarchy*

In its operation, Dyarchy proved to be a failure. An official committee[11] headed by Sir Alexander Muddiman made a thorough examination of the working of Dyarchy in the Provinces and came to the conclusion that it was a failure. Although the committee had produced majority and minority reports, both were united on this point. They differed only in their specific allegations. The majority reported the following defects :

(*a*) The interference of the 'Reserved half' of the Government on the 'Transferred half' and vice versa.
(*b*) The failure to encourage joint deliberation between the two halves of the Government.
(*c*) The absence of joint responsibility of the Ministers.
(*d*) The lack of real authority in the Ministers as a result of interference from the Governor, the Government of India and the Secretary of State.
(*e*) The excessive control exercised by the Finance Department (a reserved subject) over the Transferred Departments.
(*f*) The failure on the part of the Indian Civil Service to co-operate with the Ministers.

Some of these defects deserve to be examined in more detail. The lack of clear demarcation of subjects between the two halves enhanced the possibility of mutual interference between the two halves of the Government. Whenever such conflicts arose, the Governor was to act as arbitrator and generally he sided with the Reserved half. The minority of the Commission regarded this as

[10] Swarajists were those active members of the Indian National Congress who were in favour of contesting the elections under the Act of 1919 rather than boycotting it (as advocated by those led by Gandhi). C. R. Das and Motilal Nehru were the leaders of the Swarajists.

[11] The Committee consisted of twelve members with a non-official majority. Among the members of the Committee were Sir T. B. Sapru, Sir Sivaswami Ariyeand Mr. M. A. Jinnah.

an inherent defect of Dyarchy. The majority, on the other hand, thought that the two halves would work more smoothly if the division of subjects between the two halves was based upon more scientific principles.

Joint deliberation of matters of policy and administration was not an obligatory part of the system. The initiative in this connection rested with the Governor. But only a few of the Governors encouraged this practice. The majority of the Muddiman Committee wanted this to be accepted as a principle in order to make the embryonic beginning of a cabinet system. But the minority thought that even if this were adopted as a principle, it would not remove the inherent defect of Dyarchy. "We maintain" they said, "that it is an inherent defect of the present Constitution that the Government should be divided into two halves".

The principle of joint responsibility was not secured nor was it possible to secure it under the system. The Ministers were not selected on the basis of organized political parties in the Legislature, but on an individual basis. There was also no office of Chief Minister. In the absence of joint responsibility, each Minister's aim was to hold on to his position somehow. So long as he managed to be in the good books of the Governor, there was a good chance of his continuing in office. Such an attitude, instead of giving training to Indians in the science of responsible government, trained them only in the arts of flattery and sycophancy.

The Governor's powers in the distribution of subjects were absolute. Further, he appointed the Ministers in his discretion, consulted them individually, looked upon them as mere advisers and dismissed them as and when he liked. This struck at the very root of ministerial responsibility. The Governor was not a constitutional head with respect to the Transferred Subjects.

The practice of departmental secretaries having direct access to the Governor independent of the Ministers further undermined the Minister's position in the Government as well as his responsibility. The practice reinforced the suspicion of the Ministers that the permanent Civil Services were influencing the Governor behind the back and without the knowledge of the Ministers. Moreover, this privilege made the Services feel that they could afford even to ignore altogether the Ministers if they chose to do so.

The control exercised by the Finance Department over the Transferred Subjects was excessive. Further, the Finance Depart-

ment was always in charge of a Member of the Executive Council and not of a Minister. This department was not merely satisfied with furnishing financial advice but it constantly tried to control the policy of the Ministers. Often, this control was irksome and sometimes even mischievous. As the Ministers held the charge of comparatively unimportant subjects (according to the objectives of a Police State), never were their requests for adequate funds for new schemes granted by the Finance Department.

Perhaps, the most unwholesome feature of Dyarchy was the position of the Permanent Services *vis-a-vis* the Ministers. The Ministers had to implement their policies through the Services. To do this effectively, they depended on the dutiful support and co-operation to the Services. But since the top layer of the Services, particularly the members of the Indian Civil Service, were recruited by the Secretary of State and were responsible only to him, they did not show any great loyalty to the Ministers. On the contrary, the Ministers were humiliated by members of the Indian Civil Service by their insubordinate and even defiant attitude in many matters.

In the Legislature too, the position of the Ministers was none too happy. The biggest and the most organized of all political parties was the Indian National Congress. In most of the Provincial Legislatures the Congress had either a clear majority or the leading position. But since the Congress was against the dyarchical system, their representatives refused to accept Ministerships. Inevitably, the choice therefore fell upon representatives of the smaller parties or Independents. Such Ministers never had a majority to back them in the Legislatures. Often, the possibility of a successful no-confidence motion against them hung above their heads. No Minister who held on to office in such circumstances could do anything substantially useful to the people. Hence Ministership under Dyarchy became a byword for opportunism, or the patronage of the British Government.

Thus, Dyarchy failed. Even its staunch supporters soon found it uninspiring when once they were associated with its operation. The people of India, it became soon clear, would not be satisfied with this half-way house between autocracy and responsible government. In the words of Sir Courtney Ilbert, it was like one of those caravanserais which would be run up rapidly for an Indian Prince to meet a temporary need.[12] But even as a caravanserai it

[13] Ilbert and Meston, *The New Constitution of India*, p. 13.

did not satisfy those for whom it was intended. When Lord Oliver, the Secretary of State for India in the first Labour Government, compared the Act to a sea-worthy vessel and observed that it should carry Indians across if only they would get into it and row, Pandit Motilal Nehru replied : "It may be sea-worthy but what we want is not only a sea-worthy vessel but a vessel big enough for our cargo, big enough to accommodate the millions of passengers that have to cross over from servility to freedom".[13] When put to the test of practice, it was found that the Act had nothing to offer by way of substantial transfer of power to the representatives of the people. Even those optimists, like the Indian Liberals, who gave it a fair trial, found it wanting in many respects and were therefore terribly disappointed. The result was the emergence of a new spirit, a new unity and a new movement of the educated classes under the banner of the Indian National Congress. Mahatma Gandhi led the movement. He called it a 'non-violent, non-cooperation movement'. Soon, it gathered momentum and assumed the shape of a full-fledged agitation for complete transfer of power to Indian hands. Everyone felt the need of a constitution which would suit the conditions existing in India. The only difference of opinion was as to the nature of the constitution, particularly whether it should be federal or unitary in character. Thus, for the first time in the history of India, the possibility and the feasibility of an All-India Federation became the most important subject for discussion among Indian and British political leaders.

[13] *Debates in the Central Assembly*, 10 March, 1924.

CHAPTER 9

# THE CONSTITUTION ACT OF 1935

## *Background to the Act of 1935 : The Simon Commission*

THE BRITISH Government, eager to divert the attention of nationalist Indians from a widespread agitation that was gathering momentum, announced in 1927 the appointment of a commission to enquire into the working of the Government of India under the Act of 1919 and report as to whether and to what extent it was desirable to establish the principle of responsible government. The Commission, which was headed by Sir John Simon, had no Indian on it. This gave rise to protests all over India resulting in the *boycott* of the Commission by most of the political organisations in India, including the National Congress.[1] The evidence by the Commission was, therefore, not quite representative of the political opinion of the more advanced sections in India. As a result, the Report of the Commission which was published in 1930 was condemned as reactionary by nationalist opinion. The Commission was not only against an All-India Federation but it completely ignored the national demand for a responsible government at the Centre and recommended a Central Executive as irresponsible, autocratic and inflexible as before.

They recommended for a Governor-General who would have become more powerful than Shah Jehan and more irresponsible than Shah Alam. The American conception of an irresponsible executive was transplanted in a country which had been cradled in the Parliamentary system and nourished on English constitutionalism. It was not a constitutional scheme which deserved any detailed examination but a jig-saw puzzle and few Indians were capable of appreciating its Chinese mysteries.[2]

## *The Nehru Committee*

While the Simon Commission, as the official body appointed by

[1] See the reports of the Madras Session of the Indian National Congress, 1927. *Ind. Const. Doc.*, vol. III, p. 158.

[2] Sir Shaffad Ahmed Khan, *Indian Federation*, p. 19.

the British Government, made recommendations from a British point of view on constitutional reform in India, the Indian nationalist point of view was dealt with by the Nehru Committee that took up the problem for special study. The committee, known otherwise as the All Parties Committee, was headed by Motilal Nehru, one of the leaders of the Indian National Congress and the leader of the Swarajist Party in the Central Legislature. It had behind it the blessings of almost all the different political parties and groups in India.[3] The Nehru Committee submitted an admirable report which recommended, for the first time, a federation, as a constitutional remedy to drive out the twin evils of autocracy and compartmentalism from Indian political life. It also recommended the complete transfer of political power, on the basis of such a federation, to Indian hands.

The Committee considered the country as an organic whole and not as one composed of heterogeneous and independent elements such as the Princes, linguistic or religious minorities and other vested interests. This new approach, which was the only rational and truly national approach, capable of ultimately solving the political problem of the country, however, failed to satisfy most of the vested interests. On the contrary, it created suspicion in some of the minority communities[4] and also aroused serious apprehensions in the minds of the Indian Princes. The European capitalists in India too were alarmed at their bleak prospects. The consolidation of powerful vested interests which regarded the Report as inimical to their interest went on slowly but steadily. But the Nehru Report was one of the most constructive efforts made by any organization in India, and it placed an ideal before the country which could never be replaced. Its proposals were conceived in a spirit at once of idealism and accommodation, and there was 'width, warmth and largeness in the edifice upon which some of the most brilliant sons of India showered their blessings'.

By now, the British Government found that they could no longer satisfy Indian nationalism with the provisions of the Act of 1919. The urge for a change-over in constitutional structure was irresistible. Indians had already begun repeating the words of James Stuart Mill that 'the government of one people by another has no

[3] Leaders of standing like Sir T. B. Sapru and Sir Ali Imam were members of the Committee.

[4] The term minority community stands for a minority based on religion.

meaning and no reality except as the governing people treat the governed as a human cattle farm'. Hence, British imperial interests had to put on a new garb and devise a new constitutional mechanism before the surging tide of Indian nationalism. They thought that an All-India Federation, which could bring in all the vested and reactionary interests such as the Princes and the communalists who supported the British regime, would safeguard their new policy and approach.

The approach of Lord Irwin, the Viceroy, was in a different spirit. He realized that the psychological background was a want of confidence in the sincerity and honesty of British pledges to India. The effective boycott of the Simon Commission by Indian nationalism had opened many eyes. It was this realization that led to the famous declaration of 1929 by him setting forth a new political goal for India to the satisfaction, more or less, of all the Indian parties.[5] It solemnly proclaimed that the intention of the British Government was to grant India the status of a Dominion and to enlist the concurrence of all sections of opinion in India in order to break through the webs of mistrust that had clogged the relation between India and Great Britain. The Viceregal statement gave satisfaction all round, and all the Indian parties responded to it and assured the Viceroy their co-operation in the framing of a new constitution.[6]

The Indian Princes had their own reasons to support the formation of a Federation embracing the whole of India. Paramountcy in practice had been disconcertingly authoritarian and arbitrary, as it was exercised by the British Government and their Political Agents. The doctrine that 'paramountcy was paramount' was detested by all of them, and yet, they could do nothing to get out of its clutches. The sovereignty of the Crown was everywhere unchallenged. When Lord Curzon said that 'the links that held the Crown and the Princes together were not iron fetters that had been forged for the weak by the strong, nor were they artificial couplings that would snap asunder the moment that any unusual strain was placed upon them', it was only flowery rhetoric that afforded but cold comfort to the Princes. Therefore, every Indian Prince aimed

[5] *Ind. Const. Doc.*, vol. III, p. 177.

[6] e. g., the Working Committee of the Congress issued a manifesto on 2 Nov., 1929 hoping that it would be able to co-operate with the British Government in this matter. *Ind. Const. Doc.*, vol. III, p. 188.

to become completely free from every external influence so far as the internal affairs of his State were concerned. This, they thought, would be facilitated by an All-India Federation, which would give them a free hand in their own respective spheres of authority.

With this end in view, a number of leading Princes, from time to time, had expressed their willingness to join with British India in a co-operative enterprise. Responding to the invitation of Lord Hardinge to a conference to consider the question of higher education in the States, the Maharajas of Gwalior and Indore had given expression to their faith in the essential identity of the two Indias —British India and Indian India. The Gaekwad of Baroda in welcoming the system of conferences initiated by Lord Chelmsford expressed the hope that the system would develop into a permanent council.[7] The Maharaja of Bikaner said in 1939 :

> I look forward to a day when a United India will be enjoying Dominion Status under the aegis of the King Emperor, and the Princes and the States will be in the fullest enjoyment of what is their due, as a solid federal body in a position of absolute equality with federal Provinces of British India.[8]

Sir Mirza Ismail, Dewan of Mysore, wrote in the same period :

> We have been held in tutelage till now. The Mysore treaty gives full expression to the measure of the paternal guidance that was thought necessary for an Indian State at the time of the Rendition of the State in 1881. In the past half a century we have grown up; the State has long enjoyed the reputation of being the 'Model State' in India; and we feel that the time has come for it to be taken out of the leading strings.[9]

The Indian States Committee was equally sure that India's future lay in a federation which it regarded as a remote ideal.[10]

That the Indian National Congress favoured an All-India Federation with complete transfer of power to Indian hands and granting India the status of a Dominion was clearly shown by its numerous official pronouncements and resolutions in annual conferences.[11]

[7] M. K. Varadarajan, *The Indian States and the Federation*, 1939, p. 12.

[8] Ibid.

[9] *The Morning Post*, London, 19 July, 1934.

[10] The Committee (1928-30) with Sir Harcourt Butler as Chairman made a comprehensive study of the relationship between Indian States and British India in a future All-India Federation.

[11] The Indian National Congress and the Goal of Independence, *Ind. Const. Doc.*, vol. III, p. 169.

Thus, all the major political forces in India were almost unanimous in their agreement over the principle of an All-India Federation, even though they had different and even antagonistic objects to be achieved from such a constitutional set-up'.

The plea for a strong, centralized, unitary government embracing all the British Indian Provinces came first from P. S. Sivaswamy Iyer, an eminent jurist from the South.[12] He was joined later by G. A. Natesan, a distinguished social thinker, denouncing the formation of an All-India Federation. But these were only lone voices in the wilderness. The country was almost unanimously in favour of the establishment of a federation. It was in this atmosphere that the First Round Table Conference was announced and every participant hoped to make his own contribution to the common good of the country.

But an unexpected situation cropped up to mar the atmosphere of co-operation. The Viceregal statement of conciliation was made a subject of discussion in the House of Commons in which the then Prime Minister, Baldwin, and Sir John Simon took part. The trend of the discussion showed that the Conservatives and even the Liberals were against giving Dominion Status to India. A great controversy arose on this issue both in India and in England and the Congress became suspicious about British intentions. The result was that it shelved the demand for Dominion status embodied in the Nehru Report and went one step further and passed the Independence Resolution[13] of 1929 at its annual session at Lahore. The gesture of co-operation was withdrawn and the Congress boycotted the First Round Table Conference. However, the Liberals and other Indian parties co-operated with the work of the Round Table Conference along with the Princes.

### *The First Round Table Conference*

The First Round Table Conference started its work in an atmosphere of gloom and depression, as cables were pouring into London from many parts of India reporting the progress of the Civil Disobedience Movement. However, the Maharaja of Bikaner, in a dramatic manner, declared in the first session of the Conference the willingness of the Princes to join an All-India Federation. He

[12] See Sivaswamy Iyer, *Indian Constitutional Problems.*

[13] *Ind. Const. Doc.*, vol. III, p. 307.

emphatically asserted that federation was a word which had no terrors for the Princes and the Governments of the States. The Maharaja of Patiala, the then Chancellor of the Chamber of Princes, echoing the confident spirit of this statement, reiterated the Princes' acceptance of the principle of federation. In fact, every delegate expressed his willingness to support the federal plan. As the chief spokesman of the British Government, the then Prime Minister, MacDonald, in his final speech, declared that the ideal of an All-India Federation, with a federal executive responsible to the Legislature, was agreeable to his Government. This policy was set out in a Command Paper which was subsequently approved by both the Houses of Parliament.

But, in spite of their professed intentions, the British Government did not give effect to the proposals by introducing a Bill for the establishment of the proposed Indian federation. Instead, they marked time, which was one of the features of British policy in India regarding constitutional changes.

> If that Conference had been followed by legislation, all would have been well. But is was followed by two barren sessions ; the drawn-out sittings of the Joint Parliamentary Committee, punctuated by delays in pursuit of the red herring drawn across the trail. In the depression of hope deferred, the bright promise of the First Round Table Conference wiltered, dried almost to a cinder by arid blasts of reactionary oratory.[14]

The delegates returned home with the word 'federation' on their lips. But soon every party realized the complexity and immensity of the problem. The interests of the Princes began to clash with the demands of British India. The question of paramountcy became a hurdle in the constitutional progress of India. The greatest set-back was the absence of the Congress in the deliberations. Time passed in discussion, in claims and counter-claims. One thing, however, emerged clearly. The 'prolix and sundry proposals' which had been piled up during the period 1929-30 were quickly consigned to the limbo of oblivion, and the concept of federalism was evolved finally as the only remedy for the ills and evils of the Indian body politic.

*The Second Round Table Conference*

The Viceroy, Lord Irwin, who was anxious to create an atmosphere

[14] Sir Stanley Reid, quoted in Ganguly, *The Indian Constitution*, 1935, p. 113.

of cordiality and co-operation on the Indian political scene, as a gesture of generosity, ordered the release from jail of Gandhi who on his part reciprocated the new approach by withdrawing the Civil Disobedience Movement. This was followed by a prolonged series of conversations between Gandhi and Lord Irwin which helped to enhance the confidence of the country in British intentions and, finally, led to the famous Gandhi-Irwin Pact. On the basis of this pact, Gandhi agreed to participate in the Second Round Table Conference[15] as the sole representative of the Indian National Congress.[16] The participation of the Congress raised high hopes about the successful outcome of the Conference.

By the time the Conference held its first session, the Princes had revised their ideas under the leadership of the Maharaja of Patiala and wanted a confederation instead of a federation. It seems that the Princes were frightened by the implications of Congress participation following the Gandhi-Irwin Pact. However, some of the premier Indian States remained firm in their adherence to the federal idea. The Indian Liberals claiming themselves to be the ambassadors of amity between the Congress and the Government were encouraged by Gandhi's presence and were ready for co-operation. But again unexpected trouble cropped up to upset the bright hopes of success. In England, the Labour Government had by now given place to a Coalition Government in which the Conservatives were in a dominant position. Their professed views about Indian independence were notoriously reactionary in character.

Nevertheless the Conference met. Sir Samuel Hoare, as the chief spokesman of the British Government, declared at the outset, to the surprise of all, that the Round Table Conference was not a Constituent Assembly. This was followed by elaborate speeches from various delegates unleashing a conflict of ideas. Gandhi's lone voice was like a note of melody amidst the jumble of a quarrelling crowd.[17] Though the Prime Minister of England reiterated the goal of federation, Gandhi's demand for *Purna Swaraj*[18] was not conceded. His indefatigable logic, stubborn defence and passionate appeal were of no use. The Conference was a failure. When he

[15] 30 November, 1931.

[16] The strength and weakness of Gandhi as the sole representative of the Congress is discussed by Subhas Chandra Bose, *The Indian Struggle*, p. 247.

[17] See his address to the Conference, *Ind. Const. Doc.*, vol. III, pp. 189-97.

[18] Complete independence.

came back, he told his followers :

> I admit that I have come back empty-handed, but I am thankful that I have not lowered or in any way compromised the honour of the flag that was entrusted to me.[19]

## *The Third Round Table Conference*

The Second Round Table Conference had appointed a Consultative Committee to arrive at agreements on communal and other outstanding issues. But this Committee could not recommend any agreed solutions. This compelled the British Government, which was bent upon imposing a new constitution on India, to stage another conference in London 'for a final review of the whole scheme'. This time, the size of the Conference was smaller and the agenda was precise and well-defined. Both the Indian National Congress and the Labour Party of Britain abstained from participation. But as a prelude to what was to happen at the Conference came the notorious Communal Award[20] which compelled Gandhi to begin a fast unto death. The Poona Pact effected a compromise[21] and, as a result, Gandhi broke his fast. Meanwhile, the Conference went ahead with the deliberation on other issues.

The Secretary of State for India at the close of the Conference declared three important points about the proposed new constitution. First, the accession to the federation of about 50 per cent of the Indian States, reckoned in terms of number and population, would be regarded as justifying the inauguration of the All-India Federation. Secondly, the Indian Muslims would be granted 33½ per cent of the seats allotted to British India in the Central Legislature. Thirdly, Sind and Orissa would be made separate new provinces.

[19] See in this context, C. P. Shukla, *When Gandhiji Returned Emptyhanded.*

[20] This is also known as Ramsay MacDonald's Award, 4 August, 1932. According to this, separate electoral districts were created on a religious communal basis, fixing the number of seats in the legislature for Muslims, Anglo-Indians, Indian Christians, Sikhs, Europeans, etc. But the worst part of it was fixing of separate electoral seats for the 'Depressed Classes or the Scheduled Castes' who were a part of the Hindu Community. It was against this that Gandhi fasted.

[21] According to this, separate electorates for the Depressed Classes were abolished and special guarantees were given to them as part of the Hindu Community.

Summing up the deliberations of the Conference, it may be said that the protracted and prolonged discussions missed the substance of the whole problem, namely, Indian independence.[22] The final proposals of the British Government for constitutional reforms were embodied in the White Paper Proposals of 1933 consisting of 202 paragraphs. It embodied three major principles forming the basis of the proposed constitutional set-up in India, namely, federation, provincial autonomy and special responsibilities and safeguards vested in the Executive, both at the Centre and the Provinces. The White Paper Proposals provoked great controversy and satisfied none. The result was the appointment of the Joint Select Committee under the chairmanship of the Marquess of Linlithgow. After eighteen months' labour the Committee produced a majority report in November 1934. They declared that there should be an All-India Federation and the federation should be formed when 50 per cent of the Princes joined the scheme. They recommended full responsible government in all the eleven British Indian Provinces. They also said that the safeguards to be provided in the constitution should not in any way interfere with the growth of healthy conventions and should only be necessary during the period of transition.

It was on the basis of the report of the Joint Select Committee that a Bill was introduced in Parliament. With a few official amendments it was passed with a substantial majority, received the Royal assent on 2 August 1935 and became the famous Government of India Act of 1935. It is a document which runs into 451 clauses with fifteen schedules, making it the longest and the most complicated one ever introduced in the British Parliament. There were two notable features in the Act which set it apart from other Acts which had been passed by the British Parliament with reference to constitutional reforms in India. These were the absence of a preamble and the proposals to prescribe the Indian franchise, after the passage of the Bill, by Orders-in-Council subject to the approval of both the Houses of Parliament.

The Bill was assailed both in England and in India almost by all parties. It was assailed on the one hand for aiming at too much where the circumstances did not permit it. On the other hand, it was assailed because it granted too little real political power to

[22] On this point both the Indian National Congress and the Muslim League were one *Ind. Const. Doc.*, vol. III, pp. 224-32.

Indians who expected full Dominion Status ; to them, the Bill constituted a gigantic constitutional facade without anything substantial within it.

### *Peculiarities of the Federal System Contemplated under the Act of* 1935

The federal system which the Act of 1935 aimed to establish was perhaps the most complex ever known in the history of federalism. It is true that federation was the only answer to the tangled web of Indian constitutionalism and the only way to meet the needs of the twentieth century. That was why all parties had toyed with the idea of the creation of an All-India Federation. But in an attempt to satisfy diverse interests, some of them contradictory to each other, many features of a good federal system had to be abandoned.

1. In order to create a federation the Constitution Act sought to perform a double operation at one stroke. It first wanted to break up the then existing British Indian Government into autonomous Provinces and then unite them together in a federal framework which was expected to include the Indian States. The Act was powerful enough to bring all the Provinces compulsorily into the federation but was powerless to bind the Princely States. It meant that some of the units were to join the federation out of their own will, while others had no choice in the matter.

2. An Instrument of Accession was the document devised to rope in the Indian States into the proposed federation. But the Instrument was not of a uniform standard. It could vary from ruler to ruler and thereby could create as many federal compacts as there were Indian States in the federation. Thus, while there was to be uniformity in the range of the legislative and executive powers exercised by the Central Government *vis-a-vis* the Provinces, there could be no such uniformity in the case of the Indian States. It wholly depended upon the terms of each Instrument of Accession.

3. As a natural consequence of such an arrangement, there would have been a multiplicity of constitutional documents, indeed a unique feature under a federal system. The general principle that the federal government should have an identical range of powers over all the constituent units of a federation would have been applicable only to the Provinces and not to the Princely States

which became members of the federation.

4. The Government at the Centre was not to be a fully responsible government, although the units were to be autonomous and expected to operate on the basis of responsible government. The principle of Dyarchy experimented in the Provinces under the Act of 1919 was transplanted to the Centre under the Act of 1935. The Governor-General was responsible not to anybody in India but to the British Crown through the Secretary of State for India.

5. Some of the important activities of the Central Government such as defence, external affairs, etc., were placed under the exclusive control of the Governor-General, and the Central Ministers responsible to the Federal Legislature had no right to question the actions of the Governor-General with respect to these subjects. Even if he acted in a dictatorial manner and to the detriment of the interest of the country, the Federal Legislature would have no right to review his conduct or question his actions.

6. The Federal Legislature was to be a curious combination of democratic and autocratic elements. While the Provinces were to send elected representatives on their behalf, the States were given the freedom of sending the nominees of the Rulers as their representatives to the Central Legislature. Further, the States were given a larger representation in the Legislature than they deserved on the basis of their population.

7. In the federation contemplated under the Act of 1935, the federal principle was modified by unitary elements in the form of control by the Centre to an extraordinary extent. The Governor-General was given vast powers of intervention in the affairs of the Provincial Governments, which to a great extent modified the application of the federal principle. As a result of this peculiarity, the Government established under the Act is characterized by some authors as 'quasi-federal'.[23]

8. The division of legislative powers into three elaborate lists—the Central, Provincial and Concurrent Lists—embodied in the Constitution Act of 1935, was for the first time attempted under any federal system. The clear demarcation and the almost exhaustive enumeration of powers as shown in these three lists was unparalleled and created a record in the application of the federal principle.

9. The Residuary Legislative Power is normally located either

[23] e. g., K. C. Wheare, *Federal Government*, 1946, p. 28.

in the Centre or in the units in all federations. But in the case of the federation under the Act of 1935 it was vested neither in the Centre nor in the units but in the Governor-General who at his discretion might empower the Federal Legislature or the Provincial Legislatures to enact a law in respect of any matter not enumerated in the Central or Provincial Lists. The residuary power in the case of the Indian States was vested in the Rulers thereof.

10. The Centre had more administrative powers over the Provinces than over the States, according to the Act. Thus, federal officials could administer the federal laws in the Provinces. Even in the administration of the provincial subjects, the Governor was placed under the control of the Governor-General in his discretion. On the other hand, federal laws could be administered in the States only by the Rulers thereof.

11. The number of units to enter the federation contemplated by the Act was bound to create a record. There were some 600 Princely States in India and even if only half of them entered the federation (which was the necessary minimum for the formation of the All-India Federation) the number of units would have been unprecedented in any federation. Further, the disparities among the federating units in regard to their areas, populations, resources and systems of internal administration would have been most pronounced. In this respect, even the Imperial German Federation, which was brought about by Bismark in the nineteenth century, would have provided a less complex organization in comparison with the one contemplated in India.

The Constitution Act of 1935 did not evoke any enthusiasm either in Britain or in India. In Britain, a powerful section of the Conservatives thought that too much power was being given to Indians, while many in the Labour Party thought that the Act did not go far enough to satisfy Indian demands. Churchill, who was a vigorous critic of the Act, denounced it as 'voluminous but not luminous' and 'a work of pigmies'. In India every party, except the Liberals and the Hindu Mahasabha, was emphatic in condemning the Act. The Indian Princes quietly backed out of the federal scheme and, as a result, the All-India Federation soon became a lost ideal. Nevertheless, the relationship between the Centre and the Provinces came to be regulated in accordance with the federal provisions of the Constitution which came into operation in 1937.

*Federal Executive under the Act of* 1935

The Federal Executive was to consist of the Governor-General, the Counsellors (of the Governor-General) and the Council of Ministers. Since the full-fledged federal executive envisaged by the Act never came into existence, the Counsellors and the Council of Ministers need not take up any space in this discussion. It may, however, be pointed out that the Counsellors were to advise the Governor-General with respect to those subjects for which he was to act at his discretion and the Council of Ministers to do the same with respect to the rest of the subjects under the Central Government.

The role of the Governor-General under the Act was indeed unique for any executive head. He had a dual role. He was the Governor-General of India with respect to British India and the Crown Representative with respect to the Indian States. As Governor-General, he was the head of the federal executive. But as Crown Representative, he was in charge of the use of the Royal prerogative and paramount authority in relation with the Indian States. This dual role in one and the same person had the advantage of helping the smooth working of these two important offices.

The Governor-General was appointed by His Majesty and the appointment was generally for a period of five years. He drew an annual salary of Rs. 2,50,800. In addition, there was also provision for a number of allowances in order to maintain the office in dignity, pomp and splendour. All these were non-votable by the Central Legislature and were charged on the Consolidated Fund of India.

The Governor-General exercised his authority in two distinctly different ways. First, in certain matters he acted at his own discretion which meant without consultation with his Ministers. In such matters, the Ministers had no right to tender advice to the Governor-General. Secondly, in all other matters, he was to act on the advice of his Ministers except when he could exercise his individual judgment, in which case he was not bound by the advice. To guide the Governor-General in the exercise of his powers, an Instrument of Instructions was issued by His Majesty. But no one in India could challenge him about the manner in which he was acting with respect to these Instructions.

There were four subjects set apart, for the working of which the

Governor-General had discretionary powers. They were : Defence, External Affairs, Ecclesiastical Affairs and Excluded and Partially-excluded Areas. To assist him in this connection, the Governor-General could appoint Counsellors, not exceeding three in number. They were responsible only to him and theirs was purely an advisory function. In the discharge of these functions, the Governor-General was responsible to the Secretary of State and through him to the British Parliament.

Although the Governor-General was to act on the advice of the Council of Ministers with respect to all other matters, even here, he could exercise his individual judgment in a large number of subjects. The most important of these were :

(*a*) The prevention of any grave menace to the peace or tranquillity of India or any part thereof.
(*b*) The safeguarding of the financial stability and credit of the federal Government.
(*c*) Safeguarding the legitimate interests of the minorities.
(*d*) Securing of legal and equitable rights and the safeguarding of the legitimate interests of members of the Public Services.
(*e*) The prevention of discrimination, by executive action, against British subjects domiciled in the United Kingdom and companies incorporated in that country.
(*f*) Prevention of executive action, which would subject goods of the United Kingdom or Burmese origin imported into India, to discriminatory or penal treatment.
(*g*) Protection of the rights of any Indian State and the rights and dignity of the Ruler thereof.
(*h*) The securing of the due discharge of his functions with respect to which he is required to act at his discretion or exercise his individual judgment.

These powers obviously were not limited in scope but cut across the entire fabric of administration. They represented a retention of power as substantial and as fully endorsed by law as vested by the Constitution of the United States in the President as Commander-in-Chief, but more extensive both in respect of their scope and in respect of the circumstances in which they could be brought into play. The Joint Parliamentary Committee justified these extraordinary powers as those required 'to hold the scales evenly

between conflicting interests and to protect those who have neither influence nor ability to protect themselves'. But such a function does not seem to be that of an executive head. On the contrary, it should belong to an independent judiciary which can act in an impartial manner. This is why a number of these provisions are today found in the chapter on Fundamental Rights in the Constitution of independent India, for which the guarantee is the Supreme Court of India.

It is strange that the Joint Parliamentary Committee did not consider these powers as inconsistent with the basic principles of responsible government. It would seem that there was no genuine intention on the part of Britain to transfer any real power to Indians. In the words of an English author, Professor A. B. Kieth, 'Too narrowly interpreted, the special responsibilities (of the Governor-General) might destroy the possibility of ministerial responsibility.' Naturally, there was little scope for establishing a system of responsible government, or an attempt to create a facade of it. After Dyarchy was abandoned in the Provinces on account of its failure, it was curious that such a system was recommended for the Centre under the Act of 1935. The ultimate creation of responsible government at the Centre could not be reached by devising a Central Executive, one half of which was not responsible for the other. Such a plan was unworkable, and was no real advance in the direction of developing Central responsibility at all. This was demonstrated later during Lord Wavell's Governor-Generalship when both the Congress and the Muslim League joined the Executive Council of the Governor-General.

### *The Central Legislature*

A discussion on the provisions which dealt with the Central Legislature under the Act of 1935 has no great value, as that body never came into being. Nevertheless, it provides interesting material to show the complexity of the political picture that existed then in India. The Central Legislature was to consist of His Majesty represented by the Governor-General and two chambers, the House of Assembly and the Council of State.

The House of the Assembly was to have a maximum of 375 members of whom 250 were to be from British India and the rest from the Indian States. (The population of the States was

only one-fourth of the total population of India.) Of the 250 from British India, three were to represent Commerce and Industry and one Labour. The remaining 246 were to be elected from the Provinces on the basis of territorial constituencies largely formed in proportion to population. The Assembly's tenure was normally for a period of five years.

The Council of States was to have a maximum of 260 members. Of these, 156 seats were allotted to British India and the other 104 to the States. This meant that the States were given a 40 per cent representation in the Council. Of the 156 seats which belonged to British India, seven were reserved for Europeans, one to an Anglo-Indian, two to Indian Christians and six to others to be nominated by the Governor-General at his discretion. The remaining 140 seats were distributed among the Provinces. The Council was intended to be a permanent body with one-third of its membership retiring at the end of every second year. The members were to be elected by the Provincial Legislatures.

The bicameral Central Legislature was a curious mixture of many principles and interests. While members from British India were to be directly elected, those from the States were to be selected by their Rulers in a manner they considered expedient. The States were given an unduly large representation in contrast with British India. The principle of communal representation was given recognition in the case of a number of small communities. There was, in addition, the principle of nomination by the Governor-General in his discretion.

### *The Governor-General and the Legislature*

A most striking feature of the Central Legislature was its relationship with the Governor-General. In fact, the powers of the Governor-General in relation to the Legislature were so over-whelming that the latter had hardly any power which could be claimed as its own.

The Governor-General acting at his discretion could summon either Chamber to meet at a place and time he thought fit. He could prorogue either Chamber or dissolve the Assembly, again at his discretion. He was to make rules for the following after consulting the Presiding Officers of the Houses : any matter connected with his acting at his discretion or in his individual judgment ;

for securing the timely completion of the financial business ; for prohibiting discussion on certain matters such as the States ; for prohibiting discussion save with his consent on matters such as the relation between His Majesty or the Governor-General and any foreign State, the tribal areas, the administration of any excluded areas, any action taken by the Governor-General in relation to the affairs of a Province, and the personal conduct of any Indian Ruler or the member of a ruling family.

The Governor-General had also the right to address or send messages to both the Chambers. When a Bill was passed by both the Houses it was to be placed before him. He might give his assent to it or withhold his assent, return it for consideration or reserve it for the signification of His Majesty's pleasure. In addition to these veto powers, he had the power to issue Ordinance when the Legislature was not in session or issuing such Ordinances with respect to certain subjects even when the Legislature was in session or enacting permanent laws, in the form of the Governor-General's Acts, with respect to those subjects which were his special responsibility.

Thus, the Central Legislature contemplated under the Constitution Act of 1935 was more a legislature by courtesy than by its powers. If ever it had come into being, it had to act as a body subordinate to the executive dominated by the Governor-General. Both in the legislative and the financial fields, its hands were tied and powers were severely restricted. It had no power of initiative in raising revenues and hardly any control over items charged on the revenues of the Federation. What British India got was nothing but a system of responsibility halved in part and mutilated in substance by conditions and restraints.[24]

### *The Federal Court*

As the Constitution Act of 1935 had envisaged a federal system of government, it was only natural that it should provide for the setting up of a Federal Court. In fact, of all the institutions set up under the Act, it was the Federal Court which proved to be the most successful in operation. According to the Act, the Court was to consist of at least three judges, a Chief Justice and two associate judges. It was located at Delhi.

[24] B. R. Ambedkar, *Federation versus Freedom*, p. 138.

The judges were to be appointed by the Crown and were to hold office until they completed the age of sixty-five. For appointment to the Federal Court, the minimum qualification prescribed was either five years of experience as judge of a High Court or ten years as a lawyer in an Indian High Court or a higher Court in Britain. In the case of the Chief Justice, such minimum was fifteen years.

The judges of the Federal Court were given high salaries and it was provided that the salaries fixed at the time of their appointment could not be altered later to their disadvantage. They could be removed from office only on proved misbehaviour. They were entitled to a pension on retirement on the basis of their length of service. Their conduct as judges could not be made a subject of debate in the Central Legislatures. Thus, the Court's independence was constitutionally protected.

The Court had three different kinds of jurisdiction, orginal, appellate and advisory. It had exclusive original jurisdiction to hear all disputes between the units of the federation, or between the Centre along with one or more units on one side and one or more units on the other, where an interpretation of the Constitution Act was involved. Its appellate jurisdiction embraced every case which was decided by a High Court in India and in which the High Court concerned certified that the case involved the interpretation of a provision of the Constitution Act. In its advisory jurisdiction, the Court could give its opinion on a matter of law or fact whenever the Governor-General sought its advice in the matter.

A major weakness of the Federal Court, however, was that it was not the final or ultimate interpreter of the Constitution Act, for, appeals could be taken to the Judicial Committee of the Privy Council from the Federal Court. This was a serious limitation of the powers of the Court. Yet, the Court functioned as an independent and impartial institution interpreting the Constitution and laying down the foundations of a real federal judiciary in the country. It was the commendable work of the Federal Court that made it easy for the Supreme Court of India under the present Constitution to establish itself and effectively function as the true and final interpreter of the Constitution of India.

### *Provincial Autonomy*

Of all the provisions under the Constitution Act of 1935, the most

important from the point of view of the Indian people were those relating to provincial administration. The system of government that was set up under these provisions was popularly referred to as 'Provincial Autonomy'. It is difficult to give a precise definition of this term. Nevertheless, the Indian public understood it as a system of government wherein the provinces had substantial freedom to perform the functions given to them under the Act without interference from above. Perhaps, the best explanation of the term was provided by Ramsay MacDonald in his concluding speech at the Second Round Table Conference. He said :

> We are all agreed that the Governor's Provinces of the future are to be responsibly-governed units, enjoying the greatest possible measure of freedom from outside interference and dictation in carrying out their own policies in their own sphere.

According to the Joint Select Committee, 'it is a scheme whereby each of the Governor's Provinces will possess an executive and a legislature having precisely defined spheres, broadly free from control by the Central Government and Legislature'.

It has already been pointed out that, under the federal scheme of division of powers, there were three legislative lists, a Federal List comprising subjects within the exclusive jurisdiction of the Centre, a Provincial List comprising subjects falling exclusively within the jurisdiction of the Provinces and a Concurrent List on which the Central and Provincial legislatures were both competent to legislate. The Provincial List included items such as public works, public services, education, public health, local government, agriculture, land, forests, mines and fisheries. It was the first time in the Constitutional history of British India that there was such clear demarcation of powers and that powers in the provincial sphere were entrusted exclusively to the jurisdiction of the provincial Governments. This naturally evoked considerable enthusiasm in the country for the provincial autonomy scheme. We may now consider in some detail the different authorities set up under the scheme.

### *The Provincial Executive*

Under the Act, the executive authority of a Province was vested in the Governor who was appointed by His Majesty on the advice

of the Secretary of State for India, usually for a period of five years. As a general practice, senior officers of the Indian Civil Service were appointed as Governors although there was no bar for others. The Governor was paid a high salary and a number of allowances which were charged on provincial revenues and which were not, therefore, subject to the vote of the Legislature.

As the head of the Executive, the Governor was empowered to act in three distinctly different ways : First, his acting on the advice of the Minister ; secondly, his acting on his individual judgment in which case he might consult the Ministers but was not bound by their advice; and thirdly, acting at his discretion, i.e., acting even without consulting the Ministers. The Governor enjoyed all the privileges of an executive head which included also certain legal immunities.

The Governor had a Council of Ministers to aid and advise him in the exercise of his functions, except in so far as he was required by the Act to act at his discretion. He appointed the Ministers and they held office during his pleasure. There was an Instrument of Instructions dealing with the manner in which the Governor was to exercise his powers as the head of the executive. According to this, he was expected to select the Ministers in consultation with one who commanded a stable majority in the Legislature. It was further provided that he would bear in mind the need for fostering a sense of joint responsibility among the Ministers.

Although the provincial scheme aimed at the establishment of a fairly substantial system of cabinet government in action, as a matter of abundant caution, there were a number of special powers which were vested in the Governor in order that he might use them as and when it was felt necessary by him. In addition, there were the following subjects which were his special responsibility :

(*a*) The prevention of any grave menace to the peace and tranquillity of the Province or any part thereof ;

(*b*) Safeguarding the legitimate interests of the minorities ;

(*c*) Securing of the legal and equitable rights and safeguarding the legitimate interests of the public services ;

(*d*) Prevention of discrimination against British subjects domiciled in the United Kingdom or companies incorporated in that country ;

(*e*) Securing of the peace and good government of the Partially

Excluded areas ;

(*f*) Protection of the rights of any Indian State and the rights and dignity of any Ruler thereof ;

(*g*) Securing of the execution of orders or directions issued by the Governor-General at his discretion.

Besides these special responsibilities, the Governor could exercise his individual judgment in the appointment and dismissal of an Advocate-General for the Province.

The Governor had a large number of legislative and financial powers, which again he could exercise at his discretion. There was, however, one limitation on his discretionary powers. In every such exercise of power, he was under the superintendence of the Governor-General in his discretion. This subordination, to the extent that it was in action, affected the concept of provincial autonomy.

The Governor's powers as a whole presented a formidable list seldom found in the case of an executive head functioning under a responsible system of government. Hence, many Indian critics thought that provincial autonomy was an autonomy more for the Governors of the Provinces than for the Legislatures or the Ministries of the Provinces. The fact that the Governor, in the exercise of his special responsibilities and discretionary powers, was responsible only to the Governor-General largely supported this criticism. Yet, if the Governor had a genuine interest in the working of a responsible system of government in the Province, he could contribute a great deal towards it. We will examine this question in detail later when we discuss 'provincial autonomy in action'.

### *The Provincial Legislature*

Of the eleven Governor's Provinces, six had bicameral legislatures, i.e., Assemblies and Councils, while the remaining five had unicameral legislatures, i.e., Legislative Assemblies only. The following table will show the maximum number of members prescribed for each Provincial Legislature (See Table 1).

The Provincial Legislatures did not represent the people through general constituencies. Instead, they were composed of members elected on the basis of constituencies organized according to religion or race, interest or sex. The main communities recognized on a religious or racial basis were Muslims, Sikhs, Anglo-Indians,

TABLE 1

PROVINCIAL LEGISLATURE

| *Name of province* | *Maximum number of members in the Assembly* | *Maximum number in the Council* |
|---|---|---|
| Assam | 108 | 22 |
| Bihar | 152 | 30 |
| Bengal | 250 | 65 |
| Bombay | 175 | 30 |
| Madras | 215 | 56 |
| United Provinces | 228 | 60 |
| Central Provinces and Berar | 112 | |
| North West Frontier Province | 50 | |
| Orissa | 60 | |
| Punjab | 175 | |
| Sind | 60 | |

Indian Christians and Europeans. Besides there were what are known as 'general constituencies' where the voters belonged to the different castes or sects of the Hindu religion. Even here a certain number of seats were reserved for the 'scheduled castes' or depressed classes. Special interests recognized for representation were Industry, Commerce, Landholders, Universities and Labour. A small number of seats were reserved for women who had no bar as women to contest in any other constituency.

Members of the Assembly were elected directly. The extent of the franchise varied from province to province. Generally, it was determined on the basis of a minimum land revenue a person paid, or house rent. A certain minimum educational qualification or military service also was considered adequate for the purpose. It was estimated that some 14 per cent of the population got the right to vote under this system in contrast to 3 per cent under the Act of 1919. The Assembly had a normal life of five years.

The Council was to be a permanent body with one-third of its membership being renewed at the end of every third year. A great majority of its members were to be elected, some directly and others indirectly, and the rest to be nominated by the Governor at his discretion. Those who voted in the elections to the Council

had high property qualification or paid heavy income-tax or rent or held high positions in Government or were title-holders.

Except in financial matters, both Houses had equal powers. All money bills were to be initiated in the Assembly and the Council had no voice in the matter of grants. In case of persisting conflict between the two Houses for a period of twelve months, the Governor could summon a joint sitting of the two Houses in order to solve the deadlock.

The Provincial Legislatures were competent to pass legislation on all matters included in the Provincial Legislative List. There were, however, two limitations in this field. First, when two or more Provinces by resolutions of their legislatures authorized the federal legislature to legislate on a subject included in the Provincial List. Secondly, when the Governor-General by issuing a proclamation of emergency authorized the Federal Legislature to legislate on provincial subjects. The Provincial Legislatures had also power to legislate on all items included in the Concurrent Legislative List so long as such legislation did not conflict with any federal law. Even when there was such a conflict, if the Governor-General had given his assent to the provincial law it could prevail over the federal law.

### *Legislative Powers of the Governor*

The more serious limitations of the power of the Provincial Legislatures, however, came from the Governor. It is these powers of the Governor which made him an embodiment of almost the entire power of the Provincial Government. These powers were as follows :

(*a*) Summoning the meeting of the Legislature ;
(*b*) Summoning the joint sitting of the two Houses whenever necessary ;
(*c*) Determining the rules of procedure of the Houses ;
(*d*) Addressing the Legislature or sending messages to it ;
(*e*) Giving assent to a Bill passed by the Legislature or withholding the assent or returning it for reconsideration or reserving it for the consideration of the Governor-General ;
(*f*) Proroguing the Houses or dissolving the Lower House.

In all these matters he used his powers in his discretion. Besides, the Governor's previous sanction was required for introducing Bills affecting the following subjects ;

(*i*) Any Governor's Act or Ordinance promulgated by him in his discretion ;
(*ii*) Anything relating to the police force.

Like the Governor-General, the Governor had been empowered to enact legislation of a temporary or permanent character, on his own authority, without obtaining the approval of the Legislature. He could also issue ordinance when the Legislature was not in session or at any time including when the Legislature was in session with regard to certain subjects, or enact permanent Acts in the shape of Governor's Acts. Normally, the Governor was not to issue such ordinances without securing the concurrence of the Governor-General. But if it was impracticable, he could do so without it and then report to the Governor-General.

The law-making powers of the Provincial Legislature had also limitations arising out of the powers of the Governor-General whose previous sanction was required to introduce any Bill affecting the following :

(*a*) Any Act of Parliament extending to British India ;
(*b*) Any matter in which the Governor-General was required to act at his discretion or to exercise his individual judgment ;
(*c*) Any Governor-General's Act or Ordinance issued by him at his discretion ;
(*d*) The procedure for criminal proceedings which concerned European subjects.

The Governor could reserve for the consideration of the Governor-General a Bill that was passed by the Provincial Legislature and the latter could in his turn give his assent or return it or withhold his assent or reserve it for the signification of His Majesty's pleasure. His Majesty could disallow an Act assented to by the Governor or the Governor-General within twelve months of such assent.

All these provisions show how limited were the powers of the Legislature from a constitutional point of view. The Governor

himself was all in all in the legislative field. Besides, there were the overriding powers of the Governor-General. On top of these was the veto power of His Majesty.

The Governor's powers in the financial field was another area where the Legislature's powers were further curtailed. The Legislature had powers relating to the raising and spending of the revenues of the province. It could levy taxes on matters included in the Provincial List. But finance bills could be introduced only with the recommendations of the Governor. The annual financial statement was laid before the House in two parts : (*i*) sums charged on the revenues of the Province, and (*ii*) sums required to meet other expenses proposed to be incurred from the revenues of the Province. Sums charged included such items as the salaries and allowances of the Governor and members of the Public Services, Ministers, Judges, etc.; debt charges ; expenses connected with Excluded Areas etc. The Governor at his discretion could decide whether or not an item was a 'charged item'. Charged items were non-votable. The Legislature could vote only on the remaining items.

The maximum financial power of the Legislature was to assent or refuse to assent, or assent with reduction to those items except the charged items. But even here, the House had no power of enhancement. In case of refusal to grant the sums asked for, or their reduction, the Governor, at his discretion, could restore the demands if he felt that these would have an adverse effect on the efficient discharge of his special responsibilities. The Governor could also lay before the Legislature a supplementary budget if necessary.

All these will show that even the normal financial powers of the Legislature was comparatively insignificant. Even these had been circumscribed within narrow bounds by the all-embracing gubernatorial authority. In financial matters, the Legislature had absolutely no initiative. The charged items alone amounted to more than one-fifth of the total budget and those items were altogether beyond its control. It had no power to enhance grants where it thought they were intended for the general or particular welfare of the people. Thus, in the financial field the Provincial Legislature was in a position of utter impotency.

*Provincial Autonomy in Action*

There can be no doubt as to what type of government the Constitution Act of 1935 wanted to establish in the Provinces, if not immediately at least in the long run. Parliamentary government was still only an ideal that was set before the Provinces. For, the Provincial Executive was not a fully responsible body to the Legislature. With all the special powers of the Governor in every field of governmental activity and his power to dissolve the Legislature at his discretion, the Legislature's direct influence on the executive was rather insignificant. The real test of a parliamentary system lies on the extent of responsibility of the Executive to the Legislature. Either the Executive is responsible to the Legislature or the Legislature is dissolved and a new legislature elected, and the Executive gains its confidence. But in India, under the provincial autonomy scheme, a third alternative was possible. Under Section 93 of the Constitution Act, if at any time the Governor of a Province was satisfied that a situation had arisen in which the government of the Province could not be carried on in accordance with the provisions of the Act, he could by Proclamation take upon himself the administration of the Province. Thus, the Governor had a dominant role to play. As such, it may not be incorrect to say that the parliamentary system operating in the Provinces was of a 'controlled type' and its leading strings were in the hands of the Governor. At the same time, there was the possibility for a substantial type of parliamentary government to be in operation if the Governor behaved as a constitutional head of the State and the effective control of the administration was left to the representatives of the people. To what extent was this realized in practice is a question that deserves detailed consideration.

Early in 1937, elections to the Provincial Legislatures were held. The Indian National Congress won overwhelming majorities in five Provinces : Madras, U. P.,[25] Bihar, C. P.[26] and Orissa. In Bombay, Assam and N. W. F. P.[27] it was the largest single party. Only in Bengal, the Punjab and Sind it was in a minority. The Governors, acting according to the Instrument of Instructions, invited the leaders of the majority parties to seek advice in con-

[25] United Provinces.
[26] Central Provinces and Berar.
[27] North West Frontier Province.

nection with the formation of the Council of Ministers. Except those Provinces where the Congress was in a comfortable majority, there was not much difficulty in forming the Ministries. The Congress Working Committee advised the Congress legislature parties not to accept office unless the Governors promised that they would not use their powers of interference or set aside the advice of the Ministers in regard to their constitutional activities. The Governors concerned explained that they could not give any such assurance, whereupon the Congress refused to accept office. The deadlock was, however, solved by two statements, one by the then Secretary of State, Marquess of Zetland, and the other by the Governor-General, Lord Linlithgow. According to these, it was affirmed that the scope of intervention by the Governors was restricted to the narrowest limits possible. The Congress accepted this assurance for what it was worth and soon joined office.

For a period of a little over two years, 1937-39 the Congress was in office in eight of the Provinces. In the Punjab, there was a Coalition Ministry headed by Sikandar Hyat Khan. In Bengal the Ministry was headed by the Krishak Praja Party leader, A. K. Fazlul Huq. Contrary to general expectations, the Congress Ministries in all the Provinces functioned in a remarkably effective manner. Although there were minor clashes between the Ministries and the Governors, by and large, Indian statemanship and accommodation found in the British Governors willing partners of a commendable enterprise of laying down the firm foundations of a real parliamentary government in India. It was a pity that the system could not work for a longer period on account of the serious differences of opinion between the Congress and the British Government in the wake of the Second World War. Yet, during the short period of two years, the experiment proved the value of provincial autonomy if it was allowed to function properly. It also proved that, given goodwill and understanding, constitutional or legal restrictions need not stand in the way of evolving an efficient system of responsible government. Here are some of the significant features of the system which deserve special mention.

1. For the first time, Indians got the opportunity to form Councils of Ministers based upon the principle of joint responsibility. The leader of the party which commanded a stable majority in the Legislature was invited by the Governor to seek advice in the

formation of the Council of Ministers (Cabinet) and the Ministers were appointed on his advice. The terms Prime Minister and Cabinet were used in India for the first time in 1937. They soon became terms the significance of which was understood by the people. The superiority of the Prime Minister over his colleagues was recognized and a higher salary was also given to him.

2. Minority representation did not figure as a formidable problems necessitating the intervention of the Governor or hampering the smooth functioning of the Cabinet. In fact, wherever the Congress party formed Governments, adequate representation was given to different minority communities so that the Governor had no occasion to intervene on behalf of the minorities as one of his special responsibilities.

3. The Governors hardly had any occasion to dismiss any Ministry. Where there was a fundamental difference between the Governor and the Ministry, the latter voluntarily submitted its resignation when it was found that the collaboration was no more possible. Thus, the tenure of Ministries was based on the confidence of the Legislature rather than the pleasure of the Governor.

4. The distribution of work and its allocation among the different Ministers were done mainly on the basis of the choice of the Ministers rather than that of the Governor. For the first time, Parliamentary Secretaries to assist the Ministers were appointed also with a view to training the potential leadership.

5. There was little opposition from the head of the Executive with respect to the passing of new legislation. Although the Governor could legitimately stand in the way of a number of legislative proposals on the strength of his special powers, he did not make use of them. Thus, there was for the first time the Legislatures in the Provinces functioning as real legislative bodies. Indeed the most striking feature of the working of provincial autonomy during this period was the behaviour of the Governors who functioned as constitutional heads of States. Thus, there was 'substance of independence' in the provincial field and the two cardinal principles of a parliamentary government, representative character and the executive's responsibility to the legislature, were for the first time found in practice.

CHAPTER 10

# CONSTITUTIONAL DEVELOPMENT DURING AND AFTER THE WAR

## *The War and the Constitutional Crisis*

THE CONFLAGRATION of the Second World War in September 1939 precipitated a first class constitutional crisis in India threatening the very foundation of the responsible government that was making smooth and steady progress in the Provinces. The crisis was the consequence of a short-sighted policy of the British authorities both in India and England. The Governor-General, Lord Linlithgow, made an automatic declaration of war on Germany following a similar one in the British Parliament by the Prime Minister of Britain. No doubt, the Governor-General had the legal competence for such a declaration, but such a precipitous action without even consulting the popular forces in India was politically unwise and ill-advised. Already a Bill was rushed through the British Parliament anticipating the war, amending the Constitution Act of 1935 in order to vest in the Government of India special powers for the purpose of co-ordinating the activities of the Central and Provincial Governments. The Congress protested against this amendment of the Act 'which aimed to strike at the very root of provincial autonomy and render it a force in case of war, which in effect could create a war dictatorship of the Central Government in India and which could make Provincial Governments the helpless agents of imperialism. The Governor-General's automatic declaration of war confirmed the apprehension of the Congress.

Soon after the declaration of war, the Viceroy started negotiations with the Congress, the Muslim League and the Princes with a view to enlisting their co-operation in the war-effort. The Working Committee of the Congress met and after prolonged deliberations declared their sympathy with the democracies and condemnation of German aggression. But at the same time, the committee pointed out that India could not associate herself freely in a war said to be fought for democratic freedom so long as that very freedom was denied to her and such limited freedom as she

possessed was taken away from her. The Congress was prepared to co-operate on condition that Britain should declare in unequivocal terms what her aims were with respect to India at the end of the war. The Muslim League said that its co-operation depended on two conditions: Muslims must be given justice and fair-play in the 'Congress Provinces' and no future constitution for India would be made without its approval. The Princes alone pledged their unconditional support to the British.

A series of negotiations between the Viceroy on the one hand and representatives of different parties, particularly the Congress and the Muslim League, took place immediately after the above declarations with a view to bringing about an agreement. But all these failed because the British Government was not prepared to commit itself in advance on the post-war constitutional status of India. The Congress Governments in the Provinces, as a result, tendered their resignations to the Governors by the end of October 1939. The Muslim League preferred a policy of wait and see instead of altogether condemning the British stand. The result of these political developments was that except for four Provinces—Assam, Bengal, the Punjab and Sind—provincial autonomy was no more a living constitutional feature but only a dream of the past. Indian administration, once again, was pressured into the steel-frame of the old centralized bureaucracy through the application of the emergency powers of the Executive.

During the next two years, the Congress drifted away from any possibility of settling the political deadlock, while the Muslim League consolidated its position through Jinnah's adroit manoeuvrings and bargainings with the Viceroy. It was during this period that the League passed its 'Pakistan Resolution' at Lahore in 1940 demanding the setting up of a separate sovereign Muslim State comprising the Muslim predominated Provinces of India.

On 8 August 1940, the British Government made an announcement which, later on, came to be known as the 'August Offer'. According to this, the Government was ready to expand the Governor-General's Council to include a certain number of representatives of political parties and to set up a consultative committee provided that some measure of agreement between the major political parties was forthcoming. There was, however, no agreement. The Congress rejected the August Offer and the rift between the Government and the Congress became wider than

ever before. The Congress leaders began expressing their anti-British views openly and in strong terms and some of them started individual civil disobedience. As a result, a number of prominent Congress leaders were arrested by the Government and sent to jail.

### *The Cripps Mission*

The first years of the War were the most disastrous for Britain during the whole of her history as a world power. Japan's entry into the War in 1941 was dramatic. Its consequences were far-reaching. With astonishing power Japan conquered the British colonies in the East in lightning speed and within a few months, reached the door-step of the British Indian Empire. At home, Britain was fighting for her very life against the Germans. These exigencies created a demand in Britain and the U. S. A., which had also by now become Britain's partner in the War, for a new declaration of policy towards India. Churchill, who only some months back declared in the House of Commons that the principle of self-determination embodied in the Atlantic Charter would not be applicable to India, was forced to reconsider the situation. The question was discussed by the British Cabinet in detail in the light of the suggestions of the Viceroy in this connection and finally a decision was taken to send Sir Stafford Cripps, a member of the War Cabinet and one who was reputed to be a genuine friend of India and her aspirations for independence, to try for a settlement through direct negotiations with the Indian 'political parties and communities'.

Cripps arrived in India on 22 March 1942 and presented his proposals for consideration to all the parties concerned. The main provisions of Sir Stafford's scheme were as follows :

1. The object of His Majesty's Government was the creation of a new Indian Union which shall constitute a Dominion in the British Commonwealth but in no way subordinate to Britain in any aspect of its domestic or external affairs.
2. Immediately upon cessation of hostilities, steps shall be taken to set up in India an elected body charged with the task of framing a new constitution for India.
3. Provision shall be made for the participation of Indian States in the constitution-making body.
4. His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to :

(*i*) The right of any Province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for its subsequent accession, if it so decides. If such non-acceding Provinces so desire, they will be allowed to have a constitution of their own with the same status as the Indian Union.

(*ii*) A treaty shall be signed after due negotiation between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and linguistic minorities, but will not impose any restriction on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth. Whether or not an Indian State elects to adhere to the constitution, it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new situation.

5. The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities :

The entire membership of the Lower Houses of provincial legislatures (constituted immediately after the end of the War) shall, as a single electoral college, proceed to the election of the constitution-making body by the system of proportional representation. This body shall be in number about one-tenth of the electoral college. Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British-Indian members.

6. During the critical period which now faces India and until the new constitution can be framed, His Majesty's Government must inevitably bear the responsibility for, and retain the control and direction of, the defence of India as part of their world war effort ; but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India. His Majesty's Government desire, and invite, the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and the United Nations. Thus, they will be enabled to give, their active and constructive help to the discharge of the task which is vital and essential for the future freedom of India.

In a broadcast on 30 March 1942, Sir Stafford appealed to the Indian people to accept these proposals. 'It is with the greatest hope that I look to the events of the next few days which may, if wisely handled, seal for your freedom and our friendship'.

Analysing the Cripps scheme, one could easily see that it was meant to please everyone from the Congress to the Muslim League,

the Princes to the religious and racial minorities. In effect, however, it pleased none. The Congress found in the provisions such as 'provincial option' the powerful germs of a post-war Pakistan. The Congress was also not happy over the manner in which the representatives of the States to the constitution-making body were to be chosen. The Muslim League's main objection was against the post-war provisions permitting the partition of India which, in its opinion, were so framed as not to give real protection to the Muslims.

Despite the fact that the major political parties in the country had serious objections to some of the most important provisions of the scheme, Sir Stafford conducted prolonged negotiations with the leaders with a view to finding an amicable solution. During these negotiations, he showed his willingness to modify considerably his proposals with respect to the handling of the Defence portfolio and sharing a part of the responsibility of that subject with an Indian Defence Member in the Governor-General's Executive Council. On this question, Sir Stafford and the Viceroy could not agree with each other and the British Cabinet, it seems, supported the latter.[1] As a result, the negotiations on this question came to an abrupt end.

Although it was clear that the Cripps proposals were doomed to fail, the Congress showed its willingness to join the Government if a National Cabinet was formed immediately replacing the Executive Council of the Governor-General. Cripps said that this would mean constitutional amendments which were impossible during the war-time. Moreover, he thought that in the absence of a national legislature, the Cabinet would be responsible to none but itself, could not be removed from office, and would, in fact, constitute an absolute dictatorship of the majority. He appealed to the Congress leaders to join the Exectuive Council and establish conventions which would facilitate the working of the Council just as a Cabinet. The Congress was not prepared to join the Government on such terms. The protracted negotiations which lasted some three weeks thus ended in complete failure. Gandhi had characterized the Cripps proposals as 'a postdated cheque on a crashing bank'. And if the cheque itself was vague as to what it was drawn for, there was naturally little scope for its acceptance by anyone. The one significant result of the Cripps Mission was

[1] V. P. Menon, *The Transfer of Power in India*, 1957, pp. 130 and 136.

that it widened the gulf that existed between the Government and the political parties in India.

### *The Quit India Resolution*

After the failure of the Cripps proposals, the All-India Congress Committee met at Bombay in August 1942 to discuss the situation arising out of the latest developments. The committee felt convinced that nothing but positive action alone could bring about a change of attitude on the part of the Government and an agreement for transfer of power. Weeks prior to the August meeting, Gandhi had been writing a series of articles asking the British to 'quit India' and leave India to Indians to settle their problems themselves. This idea found expression in the main resolution that was passed by the committee which became known as the 'Quit India Resolution'. Among other things, the Resolution said:

> The Committee is of opinion that the immediate ending of the British rule in India is an urgent necessity both for the sake of India and for the success of the cause of the United Nations. The continuation of that rule is degrading and enfeebling India and making her progressively less capable of defending herself and of contributing to the cause of world freedom.
>
> The freedom of India must be the symbol of and prelude to this freedom of all other Asian nations under foreign domination. Burma, Malaya, Indo-China the Dutch Indies, Iran and Iraq must also attain their complete freedom.
>
> The Committee is of opinion that the future peace, security and ordered progress of the world demand a world federation of free nations and on no other basis can the problems of the modern world be solved.
>
> An independent India will gladly join such a world federation and co-operate on an equal basis with other countries in the solution of international problems.

Gandhi was the pilot who led the Congress Committee in adopting this resolution. The British Government replied at once by arresting all the Congress leaders and banning all Congress organizations throughout India. The arrest of the leaders provoked a widespread revolution in India popularly known as the 'August Revolution'. Thousands were arrested and put in jail and the war efforts of the Government were seriously hampered in the process. The August Resolution, however, was suppressed with an iron hand.

Lord Wavell, who was until then the Commander-in-Chief, replaced Lord Linlithgow as Governor-General on 20 October 1943.

The outgoing Viceroy's regime was longer than any other Governor-General's, seven and a half years. Yet, it was one of the most unproductive of any positive achievement. As Tej Bahadur Sapru aptly remarked, 'To-day, I say, after seven years of Lord Linlithgow's administration the country is much more divided than it was when he came here.' Linlithgow came to India with great enthusiasm to establish an All-India Federation under the Act of 1935. Not only that he could not achieve this but he witnessed during his own period in India that ideal as a lost cause for ever.

Victory for the Allies came in Europe in May 1945. By now, three years had passed since the Cripps Mission. All this time most of the Congress leaders were in jail. A number of sincere attempts were made by other leaders like C. Rajagopalachari (who had resigned from the Congress in 1942 due to differences with the Congress policy during this period) and Tej Bahadur Sapru to bring about an understanding between the Government and the Congress. But all these failed and the political deadlock continued. On the political plane, however, there were three significant developments which deserve mention here. First, the Governor-General's Executive Council was expanded to a membership of fourteen which included eleven Indians. Secondly, the ban on the Communist Party which had been in existence for eight years was lifted as the Indian Communists supported the Government in its war efforts after the invasion of Russia by the Germans. Finally, the Muslim League, which in 1937 could not form a Ministry even in one province, had consolidated its position and established its sway in five Provinces—Assam, Bengal, the Punjab, Sind and the N. W. F. P. This was to have its serious consequences on the course of future constitutional development in the country. For, in 1943, Jinnah adopted a new slogan for the League, 'Divide and Quit'.

### *The Simla Conference*

In June 1945 the Governor-General announced through a radio broadcast his proposals 'to ease the present political situation and to advance India towards her goal of full self-government'. He also announced through the same broadcast the release of the top Congress leaders from detention as a preparatory measure for negotiations with him. Further, Lord Wavell made clear his

intention to call an All-Party Conference at Simla on 25 June to which he intended to invite twenty-one leaders. These included Gandhi and Jinnah, Premiers of Provincial Governments, representatives of various political parties and minority groups. The main purpose of the conference was to take counsel with the Viceroy with a view to the formation of a new Executive Council representing organized political opinion in the country. The Viceroy made it clear that the formation of this 'Interim Government' would in no way prejudice the final constitutional settlement.

The conference met as scheduled on 25 June under the presidentship of the Viceroy. The conference lasted for four days during which it deliberated on the issues placed before it by the Viceroy as embodied in his broadcast. Lord Wavell made it clear that he had three obligations to the British Government. First, he must maintain equality of numbers in the Executive Council as between Muslims and Hindus other than Scheduled Castes. Secondly, in the selection of individuals for the Council he must have a positive hand. Thirdly, the Council should work as a harmonious team, without friction and in a spirit of conciliation. The conference made a sincere attempt to evolve a formula which could help the constitution of a new Executive Council. But it could not succeed.

The major issue on which the conference failed to arrive at a solution was the manner in which the Muslim members of the Executive Council were to be selected. The Muslim League insisted that it alone had the exclusive right to make nominations to the Council. The Congress contested this claim. As a national organization it could not agree to reduce it to the status of a representative of caste Hindus alone. Speaking on behalf of the Congress, its President, Maulana Azad, pointed out that the Congress could not be a party to anything, however temporary, that prejudiced its national character, tended to impair the growth of nationalism or reduced the Congress directly or indirectly to the level of a communal body. The Viceroy pointed out that he could not impose a settlement on any party or individual. Thus, Lord Wavell's first attempt at a solution of the political problem ended in failure on account of the intransigence of the Muslim League. Although the conference failed, it appeared that Indian nationalism won. But soon it was to become clear that it was only an appearance. For Jinnah consolidated his position so much

that the realization of his ideal of the partition of the country became nearer.

Closely following the failure of the Simla Conference, political outlook in India underwent a momentous change due to two important events. First, the British general election resulted in the overwhelming victory of the Labour Party. Secondly, Japan surrendered unconditionally as a result of the dropping of the two atom bombs on Japanese cities in August 1945. The latter event removed the necessity of an interim settlement of the Indian problem as that brought the War to an end. The solution that called for was a final settlement. For this the Viceroy wanted detailed and intimate discussions with the new Labour Government and hence he left for London soon after Japan's surrender. Before leaving India, however, he had announced that elections to the Legislatures in India would take place in the course of a few months. On his retun from England, where he had detailed discussions with the British Cabinet, Lord Wavell announced that, following the elections, a constitution-making body would be set up.

In the elections that ensued, the Congress won an overwhelming majority of seats in the 'general constituencies' while the League was equally successful in the 'Muslim constituencies'. National Muslims, on the whole, suffered a heavy blow. While the elections to the Provincial Legislatures were still going on, the British Government sent to India a Parliamentary delegation in January 1946 with a view to make personal contacts with the political leaders and, perhaps, to create an atmosphere of cordiality and understanding between the two countries. The delegation spent about a month in India and had talks with all the leading political leaders. The reports of the members of the delegation on their return to England must have been an important factor in the nature of the next step of the British Government. Meanwhile, in the Provinces popular Ministries had been installed under the provisions of the Act of 1935. Of the eleven Provinces, the League could form Ministries only in Sind and Bengal. In all the other Provinces except the Punjab, the Congress formed the Ministries. In the Punjab a coalition of the Congress, Akali Sikhs and the Unionists[2] formed the Ministry under Khizr Hyat Khan.

[2] The Unionists were a Muslim political party which consistently refused to join hands with the Muslim League. Their strength was, however, confined to the Punjab only.

All this time, the Viceroy was in constant touch with the British Cabinet with a view to finalize the next plan of action. The Labour Government thought that the situation in India demanded an altogether different approach than what had been hitherto going on. The Viceroy, too, agreed with the new approach. Accordingly, it was announced on 19 February 1946 in the House of Lords by Lord Pethik-Lawrence, the Secretary of State for India, that a Cabinet Mission consisting of himself, Sir Stafford Cripps (President of the Board of Trade) and A. V. Alexander (First Lord of the Admiralty) would soon visit India to seek, in association with the Viceroy, a settlement of the constitutional issue.

### *The Cabinet Mission Scheme*

The three Cabinet Ministers arrived in New Delhi on 24 March 1946. Immediately after their arrival they held negotiations with the Viceroy and various party leaders. These negotiations lasted over seven weeks and the leaders who met included Gandhi, Azad, Nehru, Patel, Jinnah, Shyama Prasad Mukherjee, Ambedkar, Jagjiwan Ram, Tara Singh, Tej Bahadur Sapru and M. R. Jayakar. The Cabinet Mission had done their best to bring the Congress and the League together for a settlement. But like all the previous attempts by others, theirs too failed. Yet, the Mission decided to put forward what they considered to be the best possible proposals. These were included in a statement which they issued on 16 May 1946 and became known as the Cabinet Mission Plan.

The Plan can be divided into three parts. First, the examination of the proposals for the partition of the country and the creation of a new independent State called Pakistan; secondly, a scheme for the setting up of an Interim Government; thirdly, a plan for a long-term settlement.

Examining the case for establishing a new sovereign State of Pakistan consisting of the six Provinces (Assam, Bengal, the Punjab, Sind, N. W. F. P. and Baluchistan) claimed by the League, the Mission said that they were unable to agree with the proposal. This was because it would not solve the problem of communal minorities as these Provinces included also areas which were predominantly non-Muslim. They further examined an alternate proposal according to which the proposed Pakistan State should consist

of only the Muslim majority areas of these Provinces. The Muslim League itself was against such a proposal because it would be quite impracticable. The Cabinet Mission was convinced that a solution involving the partition of the Punjab and Bengal would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces. Moreover, a division of the Punjab would necessarily involve the division of the Sikh community. Further, there were also weighty administrative, economic and military considerations against the creation of a sovereign State of Pakistan. Therefore, the Cabinet Mission rejected the plea for the partition of the country and the creation of a separate State of Pakistan.

The Mission recommended the following plan for a long-term settlement :

1. There should be a Union of India, embracing both British India and the States which should deal with the following subjects : defence, foreign affairs and communications.
2. The Union should have an executive and a legislature constituted of British Indian and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.
3. All subjects other than the Union subjects and all residuary powers should vest in the Provinces.
4. The States would retain all subjects and powers other than those ceded to the Union.
5. Provinces should be free to form groups with executives and legislatures and each group could determine the provincial subjects to be taken in common.
6. The constitution of the Union and of the groups should contain a provision whereby any Province could by a majority vote of the Legislative Assembly call for a consideration of the terms of the constitution after an initial period of ten years and at ten-yearly intervals thereafter.
7. The constitution-making body should be constituted immediately through indirect election. (Direct election based on adult franchise would lead to long delay.) For this

purpose, each Province was to be allotted a number of seats proportional to its population, roughly to the ratio of one to a million. The total number of seats thus arrived at for each Province was to be divided among the main communities in proportion to their population and that the representatives allotted to each community were to be elected by the members of the same community in the Legislative Assembly. (The communities recognized for this purpose were General, Muslim and Sikh.)

8. The representatives so elected would meet together in New Delhi as one body, together with the representatives of the Indian States to constitute a constitution-making body.
9. The Constituent Assembly would separate into three sections :
   *Section A*. Madras, Bombay, U. P., C. P., Bihar and Orissa.
   *Section B*. Punjab, N. W. F. P. and Sind.
   *Section C*. Bengal and Assam.
10. Each section would decide its own provincial constitution and also whether any constitution for the group as a whole to be set up and if so the extent of its powers.
11. After the group constitutions are settled, the groups would assemble together to settle the Union Constitution.
12. The Union Constituent Assembly would negotiate a treaty with the United Kingdom to provide for certain matters arising out of the transfer of power.

The short-term plan of the Mission envisaged the immediate setting up of an Interim Government having the support of all the major political parties in order to carry on the administration while the constitution-making was in progress. In the Interim Government all the portfolios would be held by Indians. The British Government would give its fullest measure of co-operation in the accomplishment of the tasks confronted by the Interim Government.

The Mission concluded its long statement in the following words :

> We hope that the new independent India may choose to be a member of the British Commonwealth. We hope in any event that you will remain in close and friendly association with our pepole. But these are matters for your own free choice. Whatever that choice may be, we look forward with you to your ever-increasing prosperity among the great nations of the world, and to a

future even more glorious than your past.

The proposals of the Cabinet Mission soon became the object of close examination by different political parties. The reactions were on the whole favourable. Nevertheless, there were a number of details which were subjected to criticism by each party on the basis of its own stand. The main objection of the Congress was against those provisions relating to the grouping of Provinces. Jinnah was unhappy over the rejection of the League's claim for the setting up of a separate, sovereign Pakistan. The Sikhs were considerably disturbed by the proposals which, they felt, would leave them without sufficient safeguards against a Muslim majority in Group B Provinces.

On 6 June 1946, the Council of the Muslim League passed a resolution accepting the Cabinet Mission's proposals although with a number of reservations. The Congress Working Committee met on 25 June and expressed its disapproval of the system of grouping of Provinces. The Committee decided, however, to join the proposed Constituent Assembly with a view to framing the constitution of a free, united and democratic India. With respect to the formation of an Interim Government, the Committee said that it could co-operate only if its national, non-communal character was recognized in the selection of members to the Executive Council.

When the Cabinet Mission left India on 29 June leaving the Indian political scene still in an atmosphere of uncertainty, it was difficult for anyone to characterize the Mission a success. Yet there were some positive achievements. First, the problem of the future of India had been brought down from the clouds of nebulous theories to the plane of hard realities. Secondly, there had been the welcome realization that the Labour Party in England meant to keep their pledge to withdraw from India as soon as possible. Finally, both the Congress and the Muslim League had indeed accepted the long-term plan although each party had its own reservations and interpretations of almost all the controversial issues.[3]

Meeting in Bombay on 6 June 1946, the All-India Congress Committee ratified the resolution of the Working Committee on the Cabinet Mission Plan. But in his presidential address to the Committee, Jawaharlal Nehru, who was then just elected as the

[3] V. P. Menon, op. cit., p. 279.

Congress President for a fourth time, declared that as far as he could see it was not a question of the Congress accepting any plan, long or short. It was merely a question of their agreeing to enter the Constituent Assembly, and nothing more than that. 'We are not bound by a single thing', he declared, 'except that we have decided for the moment to go into the Constituent Assembly', Nehru elaborated this later in a press conference and asserted that there would be no grouping of Provinces as envisaged in the Statement of the Cabinet Mission.

These and other utterances of responsible Congressmen were taken up by Jinnah who characterized them as a complete repudiation of the basic form upon which the long-term scheme rested. He demanded clarification on this matter from the British Government. In a debate that took place soon in the British Parliament, both the Secretary of State and Sir Stafford Cripps explained the position and tried to show that Jinnah's fears were not justified. Jinnah, however, was not satisfied. At a meeting of the League Council on 27 July in Bombay, the League went back on its earlier stand and rejected the Cabinet Mission Plan in its entirety. It went one step further to reiterate its earlier stand for a sovereign Pakistan and also decided to draw up a plan of 'direct action'. Accordingly, the League declared 16 August 1946, as 'Direct Action Day'.

Elections to the proposed Constituent Assembly were completed by now in all the Provinces. Both the Congress and the League had won almost all the seats in their respective spheres.[4] In the meantime, the Viceroy had been negotiating with party leaders with a view to forming an Interim Government. The basis of his negotiations was a Council of 14 members with 6 Congress nominees (including a Scheduled Caste representative), 5 Muslim League nominees and 3 representatives of the minorities to be nominated by the Viceroy, Jinnah did not agree with this plan mainly on the same ground which he raised at the Simla Conference. Thereupon the Viceroy asked the Congress to form the Interim Government to which it responded in the affirmative.

Accordingly, on the second day of September 1946, for the first time in the two-centuries-old history of British rule in India, a fully popular Governor-General's Council consisting of national

[4] The Congress won all the general seats except nine while the League won 73 out of a total of 78 allotted to Muslims.

leaders like Jawaharlal Nehru, Vallabhbhai Patel, Rajendra Prasad and Rajagopalachari took over the reigns of Indian administration. Nehru was its first Vice-President.

The Muslim League's observance of 16 August as Direct Action Day was an invitation to violence. The result was an unprecedented holocaust in Calcutta and other cities of India where thousands of people were butchered in communal riots. These unfortunate happenings shook the confidence of Lord Wavell who thought that the only solution to get over the difficult situation was to persuade the Muslim League to enter the Interim Government. This he managed after protracted negotiations with Jinnah lasting over six weeks, and the Muslim League's five representatives joined the Government on 26 October 1946.

The Interim Government, however, did not function successfully. This was mainly because of the intransigent attitude of the Muslim League which did not want the Interim Government to function as a harmonious team as it feared that it might consolidate the position of the Congress. In fact, the Muslim League's anxiety to enter the Interim Government was motivated more by considerations of thwarting the Congress doing well in Government than by its sharing political power. Hence, it became evident soon that the League contingent in the Government was using its position in Government for the realization of the League's ambition of establishing a sovereign Pakistan. Lord Wavell tried his best to persuade Jinnah to rescind the League's Bombay resolution by which it rejected the Cabinet Mission Plan. He made it clear that the League's entry into the Interim Government was conditional on its acceptance of the Cabinet Mission's Statement of 16 May. But Jinnah adopted an evasive attitude. Further, the League representatives in the Interim Government refused to accept Nehru's leadership as Vice-President of the Council, and flouted the principles of collective responsibility. When the Constituent Assembly met for the first time on 9 December 1946, the League representatives *boycotted* it. There were also during this difficult period communal disturbances in different parts of the country to make the situation worse for bringing about any settlement.

In a last bid to break the deadlock, the British Government invited the leaders of the two parties to meet with them in London. Nehru represented the Congress, Baldev Singh the Sikhs, and

Jinnah and Liaquat Ali Khan the League. The discussions at London, however, failed to find a solution. Soon after the return of the leaders to India, both the All-India Congress Committee and the Muslim League Council reiterated their respective stands. The League's failure to enter the Constituent Assembly and its continued demand for Pakistan made the Congress and the minority representatives in the Executive Council to demand the resignation of the League members on the Council. An extremely difficult situation arose when none could forecast the grave repercussions of the withdrawal of the League members from the Council or, in the alternative, that of the Congress members. Unfortunately, Lord Wavell wavered and could not find a satisfactory course of action. He was not happy to dismiss the League members nor could persuade Jinnah to co-operate with the Congress in the Government and the Constituent Assembly in order to create an atmosphere of goodwill and trust which might lead to mutual understanding.

On 20 February 1947, Prime Minister Attlee made a statement in the House of Commons announcing the British Government's definite intention of taking necessary steps to effect the peaceful transfer of power to responsible Indian hands by a date not later than June 1948. If no agreement was reached by then between the leading political parties in India, the British Government would have to consider to whom it should transfer the powers of the Central Government, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in some other way as may seem most reasonable and in the best interests of the Indian people. Simultaneously, he also announced that Lord Wavell would be succeeded by Lord Mountbatten who would be entrusted with the task of transferring to Indian hands responsibility for the Government of British India in a manner that would best ensure the future happiness and prosperity of India.

When Lord Mountbatten arrived in Delhi on 22 March 1947, the general situation in the country was so bleak that it appeared as though it was heading for immediate and inescapable disaster. The Muslim League was preaching direct action and conducting civil disobedience against some of the Congress Ministers in the Provinces. Hindu-Muslim differences were at their worst. Even the Services who were traditionally loyal to the Government and

impartial in their approach were divided in their loyalty and had begun taking sides openly in the political controversy.

### *The Mountbatten Plan*

Immediately after his arrival at Delhi, Mountbatten plunged straight and deep into the constitutional problem. It was his objective to find an agreed solution on the basis of the Cabinet Mission Plan. He set about this task in the most zealous and expeditious manner. But the initial round of talks that he had with the party leaders, particularly Jinnah and his colleagues, convinced him that it was impossible to find an agreed solution for a united India. Hence, he directed his energies towards the acceptance of an alternative plan based upon the statement of Prime Minister Attlee in the House of Commons on 20 February. According to this, if the representatives of the predominantly Hindu and Muslim areas of Bengal and the Punjab voted for partition, these Provinces were to be partitioned, the predominantly Muslim district of Assam, namely, Sylhet, should have the option to join the Muslim Province. The plan envisaged the holding of a referendum to ascertain the wishes of the people of the North-West Frontier Province. Thus the responsibility for the partition of the country was to be placed on the shoulders of the Indian people themselves who were affected by the measure.

The Mountbatten Plan became ultimately the basis for the partition of the country which was accepted, although with great unwillingness, by the parties. The inevitability of partition was recognised by the parties. The inevitability of partition was recognized and acknowledged even by the Congress leaders by early 1947. In a public speech on 20 April 1947 Nehru said, 'The Muslim League can have Pakistan, if they wish to have it, but on the condition that they do not take away other parts of India which do not wish to join Pakistan.' Rajendra Prasad, President of the Constituent Assembly, declared in the Assembly on 28 April:

> While we have accepted the Cabinet Mission's Statement of May 16, 1946, which contemplated a Union of the different Provinces and States within the country, it may be that the Union may not comprise all Provinces. If that unfortunately comes to pass, we shall have to be content with a constitution for a part of it. In that case, we can and should insist that one principle will apply to all parts of the country and no constitution will be forced upon any

unwilling part of it. This may mean not only the division of India, but a division of some Provinces. For this we must be prepared and the Assembly may have to draw up a constitution based on such a division.

The communal situation in the Punjab, N. W. F. P. and Sind had by now reached alarming proportions. Organized disturbances resulting in the death of thousands of people and destruction of property worth millions became the order of the day. The Viceroy found that the only way in which these unhappy occurrences could be stopped was to speed up the implementation of his plan. With this object in view, he initiated another round of talks with the Indian leaders and also got in touch with the British Government. The result was the acceptance of the Plan for the partition of the country into India and Pakistan which were to be given immediately the status of a Dominion in the British Commonwealth of Nations and to advance the date of transfer of power to 15 August 1947. The Plan was announced officially on 3 June 1947 by Prime Minister Attlee in the British Parliament later to be known as 'the June 3rd Plan', and on the basis of which the necessary legislation was soon introduced in Parliament.

### *The Indian Independence Act*, 1947

The Indian Independence Bill which was designed to transfer power to the people of India was introduced in the House of Commons on 4 July and was piloted through Parliament in a record time and received the Royal assent on 18 July. The main provisions of the Indian Independence Act, 1947 are as follows :

1. As from 15 August 1947, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.
2. The territories of India shall include all the British Indian Provinces except those that comprise Pakistan.
3. The territories to Pakistan shall include the areas covered by the Provinces of East Bengal, West Punjab, Sind, Baluchistan and the North-West Frontier Province. (The Province of East Bengal includes also the district of Sylhet of Assam Province).
4. The Indian States are free to accede to either of the two new Dominions.
5. For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty and shall represent His Majesty for the purposes of the Government of the Dominion.
6. The Legislature of each of the new Dominions shall have full power to make laws for the Dominion, including laws having extra territorial

operation. No such law shall be void on the ground that it is repugnant to the laws of England or any Provision of any existing or future Act of Parliament of the United Kingdom nor an Order-in-Council shall extend to the new Dominions.

7. As from the 15th Day of August 1947, the Government of the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India.
8. The suzerainty of His Majesty over the Indian States lapses, and, with it, all treaties and agreements in force at the date of the passing of this Act, between His Majesty and the rulers of Indian States.
9. The Constituent Assembly of each Dominion shall exercise all powers exercised by the Legislature of the Dominion.
10. The Governor-General shall by order make such provision as appears to him to be necessary or expedient for bringing the provisions of this Act into effective operation and all matters incidental to it.

It was indeed a formidable task to carry out the partition of a vast country of four hundred million people and effect the transfer of power to two independent Governments in a period of about ten weeks. The task was, however, achieved with commendable success. Mountbatten flew to Karachi on 13 August to inaugurate the Dominion of Pakistan. He flew back to Delhi on 14 August. On the night of that day, the Constituent Assembly met and, in a memorable speech, Jawaharlal Nehru called upon the members and through them the entire people of India to take a pledge of dedication to the service of India. He said:

> Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suspended, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

It was a fitting tribute to the single service of Lord Mountbatten that the Constituent Assembly unanimously endorsed the proposal of the Congress leadership that he should become the first Governor-General of Independent India. Lord Mountbatten responded by saying: "I am proud of the honour and I will do my best to carry out your advice in a constitutional manner.' On 15 August he was sworn in as Governor-General in a colourful ceremony and thus began the life of a new nation ending the 182 years old British rule in India and the mightiest of empires history has ever known.

CHAPTER II

# THE 'HOME' GOVERNMENT OF INDIAN AFFAIRS

THE HOME government of Indian affairs was a term popularly used to describe the organisation of administration in Britain which was directly concerned with the British possessions in India. Since 1858, when the Crown took over the British Indian Administration in its own hands, it meant the organisation of the India Office and the relations between the Secretary of State in Council and the Government of India. But the system that was established in the post-1858 era had its origin in arrangements suited to the control by the East India Company of its commercial operations in a distant land. These operations led to the exercise by the Company of governmental powers in regard to which the British Parliament asserted its supremacy from an early date. The interaction of the two forces had by 1858 produced a constitution which may be briefly described in the following manner :

The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State of India. The Board of Control was empowered "to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies". Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.

The transfer of the administration of India to the Crown in 1858, however, had effected profound changes in the pattern of the Home Government. The most important of these changes was that the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of adminis-

trative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the line of inheritance became somewhat obscured. Even then one could see the persistence of the dual principle in the corporate activities of the Secretary of State in Council. This is clear from the following provision of the Government of India Act, 1915-16 :

"The Secretary of State has and performs all such or the other like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act 1858 had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors ... either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India[1] in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone."

The functions assigned to the Council of India were in some respects derived from the position previously held by the Court of Directors. Under the direction of the Secretary of State, and subject to the provisions of the Act, they "conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India." But at the same time they were given a special function, which was presumably intended to act as a counterpoise to the centralisation of powers in the hands of the Secretary of State. In regard to certain decisions, and notably in regard to "the grant or appropriation of any part of" the revenues of India, the concurrence of a majority of votes at a meeting of the Council of India is required. This provision, usually referred to as the financial veto, has, not without reason, been regarded as the symbol of the special status assigned to the Council in its relationship with the Secretary of State. It is emphasized, though in a lesser degree, by the enactment that in all other matters, with two exceptions, the Secretary of State must consult his Council either at a weekly meeting or by the formal procedure of depositing his proposed orders on the table of the Council Room for seven days prior to their issue, though he is empowered to overrule the Council's recommendations. The two

[1] The Board of Control.

exceptions are, first, that in cases of urgency he may issue orders without previously consulting the Council, provided that he subsequently communicates to the members his reasons for the action; and secondly, that "where an order or communication concerns the waging of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any Prince or State, or the policy to be observed with respect to any Prince or State, and a majority of votes therefore at a meeting of the Council of India is not required," the Secretary of State may act on his own initiative without reference to the Council if he considers that the matter is of a nature to require secrecy. It must, however, be emphasized that the type of relationship that developed between the Secretary and the Council reflected some of the elements which had been derived from the days of a chartered Company yielding more and more to Parliamentary control, and others which were grafted on to the structure at the time when Parliament assumed complete responsibility through its Ministerial representative. But the whole organism had been moulded by the instinctive process of adaptation to a form which does not lend itself easily to definition in set constitutional terms.

The Council consisted of fifteen members each appointed for seven years, of whom nine at least must have served or resided in British India for ten years and must not have left India more than five years prior to their appointment. It was a body differing in status but not in nature from the authorities in India whose activities came under its review. The Secretary of State represented in fact the supreme element of expert control at the "higher end of the chain of official administration." It must, however, be pointed out that the Council both in its constitution and powers represented balance and poise. Neither was it to be the master of the Secretary nor a mere puppet in his hands. In corporate capacity it had delegated wide powers to the Indian Administration without divesting itself of its ultimate responsibilities as the governing authority. But the Secretary of State, as distinct from the Secretary of State in Council, was generally responsible as a Minister for the coordination of Indian and Imperial policy. As such it was natural that he was armed with certain powers of overriding the Council.

But to check any abuse of this power two qualifications were imposed: (1) When the Secretary acted against a majority of his

Council, he should place on record the reasons why he set aside their opinion ; similarly any Councillor whose advice was not adopted could also place on record his point of view in the matter. (2) The Secretary of State was bound to call his Council at least once a week. In the matter of expenditure of revenues of India, however, the Secretary was bound by the majority of his Council. Further, all despatches to and from India should be laid before the Council although the Secretary was authorised to issue orders on urgent matters without taking the Council into confidence. He was also authorised to issue orders and send instructions on secret matters related to war, diplomatic arrangements and matters affecting the Native States of India.

In its collective capacity, the Secretary of State in Council was designed to assert its active supremacy over the Indian administration. This was ensured by the provision that all measures, administrative, financial and legislative, of the authorities in India were to be referred to it for examination and decision. The only exception to this general rule was when by general or special orders it had delegated powers of sanction to the Indian administration. But delegation had been carried out largely as a matter of expediency, with the direct object of increasing administrative efficiency. Thus the Secretary of State in Council retained the ultimate authority as the head of the system.

This system of controlling the government and administration of a vast territory like British India from a far off land—England—was bound to create many complex problems of management. Often matters of urgency and importance received neither expeditious treatment nor due consideration which they deserved. The Secretary of State had the power to give a decision in matters of urgency but seldom did it happen as he was a busy politician more concerned with even trivial matters in England than the most momentous developments in India. The natural result of such a situation was that the permanent officials in the India Office dominated the scene and the Governor-General and the Indian Administration became impotent to take speedy and appropriate action as problems arose in India.

Almost every Governor-General had given expression to his sense of frustration arising out of the obstructionist tactics and the reactionary and unsympathetic attitude of the India Office with regard to almost every measure that he initiated. Not that

the Governor-General was always eager to initiate progressive measures beneficial to the Indian people. He, being the man on the spot, had a better understanding and appreciation of the nature and the magnitude of Indian problems and therefore his proposals were at least related to realities. But the India Office was not concerned with such considerations. It always had one unanswerable plea that the supremacy of Parliament over the affairs in India was absolute.

A few examples may reveal how the India Office asserted itself and established even minute control over the British Indian administration. In 1870, Lord Mayo's Government as a whole protested at being required to pass the Bills which ultimately became the Contract Act and the Evidence Act, but the protest was of no avail. When Lord Northbrook attempted to assert the independence of the Indian Government in fiscal matters Disraeli's Government in England was equally decided in affirming the supremacy of the Home Government. The Duke of Argyll, Secretary of State, told Lord Mayo that his prerogative was not limited to a veto of measures passed in India. "The Government of India were merely executive officers of the Home Government who hold the ultimate power. . .". When in 1875 Lord Northbrook passed the Tariff Act imposing a duty of 5 per cent on imported cotton goods without referring the matter to the Secretary of State on the ground that it was urgent, he was censured by Lord Salisbury who required telegraphic intimation to be given to the Secretary of State in the case of urgent legislation. This led to the resignation of Lord Northbrook.

Lord Ripon, who was himself the Secretary of State for India for a short period (1866), wrote to his friends in Britain (1881) in bitter terms about the most unsatisfactory relations that existed during his terms as Governor-General. "There has been a marked change in the relations between the India Office and the Government of India since I knew the former in days gone by. In those times it was considered a great mistake to attempt to govern India from London. It was held the business of the Secretary of State to lay down the general principles upon which India was to be administered, and then so long as those principles were observed to leave a large freedom to the Governor-General and to accord him a cordial support. Now-a-days, owing to a variety of causes, and among them to the telegraph and the in-

creased facilities of communication of all kinds with England, a different system to a great extent prevails, and the interference of the India Office has largely increased. The result of a year's experience does not lead me to think that the change is advantageous. . . . The evils of the new system are aggravated just now by the fact that Hartington is immensely overworked with other than Indian matters, and that the subordinates of the India Office have therefore, I suspect, a good deal of their own way. . . ."

Writing about Lord Curzon's relations with the India Office, Lord Ronaldshay, his biographer, says in *The Life of Lord Curzon:*

"There had from the first been occasions on which he had been annoyed at the attitude of the Secretary of State's Council towards his policy, and more particularly towards the more important of his measures of reform. It sometimes seemed to him that his proposals met with a much more rigorous scrutiny at their hands than they had been wont to devote to those previous Viceroys". Lord George Hamilton, Secretary of State, wrote to Lady Curzon on June 20, 1902, "George (i.e. Lord Curzon) has had his way more than any Viceroy of modern times, and when you consider the magnitude of his reforms, the inevitable personal antagonisms that such changes arouse, it is marvellous that the instances in which he has been checked and overruled have been so few. . . . The Council here are the final authority in all Indian matters. They are most distinguished, experienced men and they cannot be expected to acquiesce in every thing suggested to them without comment."

Lord Minto expressed his resentment thus in a private letter: "I used to imagine that the Secretary of State aimed only at directing great principles of Indian policy and that the administration of the country rested with the Government of India, but there has been interference in every thing. It only results in intense worry to the Viceroy, for, do what he will, the Secretary of State cannot administer India".

Justifying the effective control of the Indian administration by the India Office, Sir John Strachey, who was long associated with the Government, of India, wrote in his work, *India, Its Administration and Progress*, as follows :

The increased facilities of communication, the establishment of telegraphs, the greater interest in India taken by the British public and by Parliament, the growth of the business of the Home Go-

vernment in consequence of the large investments of British capital in India, and other causes, have made the relations between the two countries far more intimate than was formerly necessary or possible, and have made more frequent the cases in which final orders cannot be passed in India; but it is an error to suppose that the Secretary of State is constantly interfering in the ordinary work of Indian administration. The description of the Home Government given by J.S. Mill in the time of the East India Company is as applicable now as when he wrote:

"It is not", he said, "so much an executive as a deliberative body. The executive government of India is, and must be, seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to scrutinise and revise the past acts of the Indian Governments; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred home for approval",

The action of the Secretary of State is mainly confined to answering references made to him by the Government of India, and, apart from great political and financial questions, the number and nature of those references mainly depend on the character of he Governor-General for the time being. Some men in that position like to minimise personal responsibilities, and to ask for the orders of the Home Government before taking action. Others prefer to act on their own judgement and on that of their councillors. The Secretary of State in ordinary time initiates little.

Sir John himself, however, concedes in his work that although the Secretary of State does not interfere needlessly in the details of administration in India, pressure was often brought to bear upon him and it was not easy for for him to resist. Party politics in Britain had its part to play in Indian administration. As a result, serious injury to India had been caused on many occasions. Since the great majority of the members of Parliament were profoundly ignorant of realities in India, vested interests could manage a majority in the House of Commons and get things done as they wanted. This was indeed the most serious malady that afflicted the 'Home Government' on Indian affairs.

Writing about this aspect, Ramsay Macdonald made the following remarks: "Parliament has not been a just or watchful steward. It holds no great debates on Indian questions; it looks

after its own responsibilities with far less care than it looked after those of the Company; its seats are empty when it has its annual saunter through the Indian budget''.

The Montford Report also expressed the same sentiments when it said that the interest shown by Parliament in Indian affairs was neither well sustained nor well informed. This indifference of Parliament gradually enabled the Secretary of State to reduce his Council to subordination and dominate the scene and thereby exercise minute control over the Government of India often to the detriment of India.

## Chapter 12

# THE CROWN AND THE INDIAN STATES

We have seen elsewhere the manner in which the Indian Rulers were brought under the supervision and control of the Company's administration in India by the middle of the nineteenth century. Wellesley, Hastings and Dalhousie, all prominent among the Governors-General under the Company, had each a role of importance in bringing the Native Princes under the British suzerainty. As a result, the Princes at first lost their right to conduct external affairs and later even submitted themselves to the British Residents with regard to the administration of the internal affairs of thier territories. So imperious were the Residents that a certain Colonel Macaulay wrote to the Rajah of Cochin : "The Resident will be glad to learn that on his arrival near Cochin, the Rajah will find it convenient to wait on him." Henry Mead, an English journalist, wrote about the pathetic plight of the Princes thus : "The sovereigns of what are called independent States live in a state of abject dependence upon the will of the British agency at their various courts. The whole functions of government are in most cases exercised by the Resident, in fact, if not in appearance ; and the titular monarch sighs in vain for the personal freedom enjoyed by his subjects...."

The Revolution of 1857, however, was an eye-opener to the British. They realised that the Native Princes if properly handled could play a vital role as one of the bulwarks of the British regime in India. This realisation led to a radical change of policy and found expression in the Proclamation of Queen Victoria in 1858. It said : "We shall respect the rights, dignity and honour of Native Princes as our own ; and we desire that they as well as our own subjects should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government." For the first time the Governor-General was designated Viceroy and Governor-General. As Governor-General he was head of the Government of India but as Viceroy he was the representative in India of the British Sovereign. Thus a new policy

emerged which envisaged the perpetuation of the States as separate entities and making them part and parcel of the British Indian empire.

By the end of the nineteenth century a machinery was perfected to control the States under the new dispensation. A new department known as the Political Department and a new service known as the Indian Political Service emerged as integral parts of this machinery. Both were directly under the Governor-General and the Secretary of State kept a close control over their activities. The Political Department had a hierarchy of Residents and Political Agents to exercise control over the States on behalf of the 'Paramount Power'.

The term Paramount Power, according to the Indian States Committee (popularly known as the Butler Committee) of 1927, means the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain. The fact of the paramountcy of the Crown and the meaning that term acquired in British Constitutional history in India were the product of an evolutionary process of at least half a century. It is based on "treaties, engagements and *sanads* supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice."

In 1877, the Government of India pointed out the significance of paramountcy in the following terms: "The paramount supremacy of the British Government is a thing of gradual growth; it has been established partly by conquest; partly by treaty; partly by usage; and for a proper understanding of the relations of the British Government to the Native State, regard must be had to the incidents of this *de facto* supremacy, as well as to treaties and charters in which reciprocal rights and obligations have been recorded, and the circumstances under which those documents were originally framed. In the life of the States, as well as of individuals, documentary claims may be set aside by covert acts; and a uniform and long-continued course of practice acquiesced in by the party against whom it tells, whether that party be the British Government or the Native State, must be held to exhibit the relations which in fact subsist between them."

The activities of the Paramount Power may be considered under three main heads: (1) external affairs, (2) defence and production

and (3) intervention.

From the point of view of external affairs, the States had no international life. They could not make war and peace or communicate with foreign States. This right of the Paramount Power to represent the States in international affairs depended partly on treaties and partly on usage. This right of the Paramount Power carried with it also the duty of protecting the subjects of those States while residing or travelling abroad. In fact, for international purposes State territory was in the same position as British Indian territory and State subjects were in the same position as subjects of British India. Through a system of consultation and communication, however, the Paramount Power safeguarded on the one hand the interests of the States wherever possible when entered into treaties with foreign powers and, on the other, made the States adhere to the provisions of such treaties.

In the field of defence, the Paramount Power was responsible for the defence of both British India and the Indian States and, as such, had the final voice in all matters connected with defence, including establishments, war material, communications, etc. It was committed to defend both these separate parts of India against foes, foreign and domestic. It owed this duty to all the Indian States alike. Some of the States contributed in different ways to the cost of this defence by the payment of tribute, by the assignment of lands, by the maintenance of Indian States Forces. All the States rallied to the defence of the Empire during the Great War, and put all their resources at the disposal of the Government. But, whether or not a State made a contribution to the cost of defence, the Paramount Power was under a duty to protect the States. It followed from this duty of protection, first, that the British Government was bound to do everything really necessary for the common defence and the defence of the State; secondly, that the States should cooperate by permitting everything to be done that the British Government determined to be necessary for the efficient discharge of that duty; thirdly, that they should cooperate by abstaining from every course of action that might be declared dangerous to the common safety or the safety of other States. These obligations were generally accepted and the States worked together with the British Government to their utmost ability. It follows that the Paramount Power should have means of securing what was necessary for strategical purposes in regard to roads,

railways, aviation, posts, telegraphs, telephones and wireless, cantonments, forts, passage of troops and the supply of arms and ammunition.

The duty of the Paramount Power to protect the States against rebellion or insurrection was derived from the clauses of treaties and *sanads*, and from uses, and from the promise of the King-Emperor to maintain unimpaired the privileges, rights and dignities of the Princes. This duty imposes on the Paramount Power correlative obligations in cases where its intervention was asked for or had become necessary. The guarantee to protect a Prince against insurrection carried with it an obligation to enquire into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances, and an obligation to prescribe the measures necessary to this result.

The Paramount Power had also the right to intervene for the benefit of the Prince, of the State or of India as a whole; to control the succession in States; and to look after the administration of the State during the minority of a Prince.

The power of intervention was a convenient tool in the hands of the British Government to discipline any State or its Ruler in any manner it thought fit. Any protest from the Ruler against intervention invariably brought the reply that the rights and privileges of the Paramount Power were absolute, that paramountcy was paramount.

In the words of V. P. Menon (*The Story of Integration of the Indian States*): "The Political Officers in the various States had comprehensive, though unwritten, authority. In the case of the smaller States, these officers frankly adopted the attitude of a superior towards a subordinate. Even in the case of bigger States and the States which had well-known administrators they had much their own way. Dissensions and jealousies among the Rulers were systematically sustained. The States were isolated from British India in the same manner as India was isolated from the rest of Asia. Even high-ranking Government officers were required to take permission from the Political Department before visiting the States."

The States also lost a considerable measure of their so-called internal sovereignty as a result of a series of measures aimed at the establishment of political and economic consolidation of British India. The introduction of telegraph, the construction of railways and the administration of cantonments are examples of such mea-

sures. In most of these cases, the permission of the Rulers concerned was never sought but was taken for granted. If anyone dared to protest, he was told to shut up. Thus the Political Department and the Political Agents had become a source of fear for the States. Hence it was not surprising that they were on the look out for a change in the existing system.

The Montford Report (1918) recognised the situation and in an attempt to placate the Princes paid glowing tributes to the magnificent part played by them in the first World War. Although the Report did not recommend any far-reaching changes in the position of the States, it indirectly assured the Princes that reforms in the States would not be brought about as a direct result of constitutional changes in British India. The Report also stressed that the politicians in British India and the Princes should respect each other's bounds. But perhaps the most comforting part of the Report from the point of view of the Princes was that no constitutional changes in British India would impair the rights, dignities privileges secured to them by treaties, *sanads* and engagements or by established practice.

With a view to facilitating a forum for the Princes to get together and express their ideas, views and comments on matters of common interest, the Chamber of Princes was brought into being by a Royal Proclamation in 1921. It was to be a deliberative, consultative and advisory body. The Viceroy was to be the President of the Chamber and the members were to elect annually a Chancellor and a Pro-Chancellor from among themselves. The Chamber soon became a true representative of a large number of States and became capable of voicing their collective needs and aspirations. The Chamber had established a Standing Committee which soon developed a close liaison with the Political Department and discussed almost every issue that affected the Princes in general. All these were indeed significant and welcome changes in the relationship between the Princes and British India: "the Paramount Power still continued to be paramount and paramountcy remained as vague and undefined as ever."[1] This was evident from the correspondence that passed between the Viceroy and the

[1] Some important States like Hyderabad, Mysore, Travancore and Jammu and Kashmir stood aloof from the Chamber of Princes as they thought that they were individually important and influential enough to deal with the British Government.

Nizam of Hyderabad (the largest Princely State) during 1926 with regard to Berar and which demonstrated in unmistakable terms the paramount character of the Paramount Power.

In 1927, the Simla Conference of Princes convened by the Viceroy demanded for an impartial enquiry into all aspects of the relationship between the Indian States and the Paramount Power. The demand was conceded and a three-member Committee headed by Sir Harcourt Butler was appointed in the same year. The case of the States was very ably presented by a group of eminent English lawyers headed by Sir Leslie Scott who asserted that the "paramount power is the British Crown and no one else, and therefore the States could not be compelled to transfer to a third party their loyalty to the Crown". The Butler Committee, however, disagreed with this view and held that the relationship between the States and the Paramount Power was not just the product of a contractual relationship based on treaties made long ago but was a "living, growing relationship shaped by circumstances and policy, resting on a mixture of history, theory and modern fact." The Committee refused to define paramountcy but asserted that "paramountcy should remain paramount ; it must fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the States. There was, nevertheless, one significant gain the Princes scored. The Committee recommended that the Rulers should not be handed over without their prior agreement to an Indian Government in British India responsible to an Indian legislature.

This was indeed a clever move to placate the Princes and to keep them tied to the apron strings of the British Crown and at the same time keep them immune from the fast-growing political currents of British India. Nationalist opinion in the country was enraged by this recommendation. This was made clear by the Nehru Committee which stressed the historical, religious, sociological and economic affinities between the people of British India and Indian India. The Committee warned : "It is inconceivable that the people of the States who are fired by the same ambitions and aspirations as the people of British India will quietly submit to existing conditions for ever, or that the people of British India bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line will never make common cause with them. They asserted that the only salvation of the

Indian States was to join hands with British India in a Federation as equal partners rather than converting themselves into an Indian Ulster by pressing constitutional theories into service."

It was perhaps this warning as well as the uncertainty of the continued existence of the British Raj in India that made the Princes to support the idea of an All-India Federation at the first Round Table Conference of 1930 in London. We have seen elsewhere in detail the progress of constitutional proposals at the subsequent (second and third) Conferences and the eventual emergence of the Government of India Act of 1935 which embodied the scheme of an All-India Federation. We have also seen how the federal scheme was implemented only in part, embracing the British Indian Provinces only, and how the States kept themselves aloof. The political momentum in British India might have made clear to them the inexorable consequences of their association with British India in an organic union and hence they thought it better to mark time and watch further developments.

It was at this stage in 1939 that the second World War broke out. The prime need of the hour was men, money and material. The British Government knew very well the ability of the Princes to produce these in strength and therefore the need to keep them on the right side. With a view to ensuring this the Governor-General, Lord Linlithgow, declared in his address to both the Houses of the Central Legislature that while federation remained as before the objective of His Majesty's Government, "the compulsion of the present international situation and the fact that given the necessity for concentrating on the emergency that confronts us, we have no choice but to hold in suspense the work in connection with preparations for federation." This was a most welcome development so far as the Indian Princes were concerned.

The period of the second World War saw the Princes again actively on the side of the British, helping the war effort. The British Government reciprocated this gesture by a series of statements which emphasised that they would honour in full their treaty obligations to the States. Both the Congress and the Muslim League had resented the manner in which the country was made a party to the war. In protest the Congress Ministries tendered their resignation. The Muslim League which was all along jealous and critical of the Congress in power celebrated the exit of the Congress Ministries as a 'deliverance day'. As a consequence

of this as well as the determined anti-Congress propaganda carried on by the League, the communal situation got worse culminating in Jinnah's demand (January 1940) for a separate independent Muslim State, Pakistan, comprising the Muslim majority Provinces. Thereafter every discussion on constitutional matters was dominated by the demand for Pakistan.

We have seen elsewhere the developments which ultimately resulted in the Independence of India as well as the partition of the country into India and Pakistan. One significant feature of all the negotiations of the period was the reiteration of the rights of the States by the Rulers and maximum possible accommodation of such views by the British Government.[2] The discussions on the Cripps Offer of 1942 was perhaps the best illustration. Lord Linlithgow was consistently sympathetic to the Rulers as in his opinion they were the only solid group behind the British in India. Nevertheless, even Linlithgow could not support the demand of a group of States to recognise their right to form a Union of their own when a federal Union was established for British India.

In 1944 when Lord Wavell was the Viceroy, the Chamber of Princes made another determined effort to prevent the States being transferred to any third party in case of transfer of power in British India. But Wavell refused to commit himself. He, however, gave an assurance that there would be no future transference of relationship of the States with the Crown to any other authority without their consent, provided the Rulers on their part gave the assurance that their consent to any changes which emerged as a result of negotiations would not be unreasonably withheld.

With the victory in Europe of Allied Powers and the coming into power of the Labour Party in Britain as a result of the elections of 1945, the tempo of constitutional developments in India received a sudden acceleration. The new Government in Britain took some months to study the situation in India and decided to send to India a three-member Cabinet Mission to find a solution to the constitutional problem. Announcing this in Parliament Prime Minister Attlee said among other things :

"I hope that the statesmen of British India and Princely India will be able to work out a solution of the problem of bringing together, in one great polity, these disparate constituent parts. There

[2] For details see V. P. Menon, *The Story of Integration of the Indian States*, pp. 48-52.

again, we must see that the Indian States find their due place, there can be no positive veto on advance and I do not believe for a moment that the Indian Princes would desire to be a bar to the forward march of India. But, as in the case of many other problems, this is a matter that Indians will settle themselves."

In their discussions with the Cabinet Mission, the States, broadly speaking, took the following stand :

1. Paramountcy should not be transferred to a successor Government but should lapse.
2. The States should not be forced to join any Union or Unions created as a result of the transfer of power in British India.
3. *Prima facie*, there should be no objection to the formation of a confederation of States if the rulers so desired.
4. There should be no interference in their internal affairs by British India.
5. Adequate safeguard should be made for the continuance of the existing arrangements in the economic and financial fields during the interim period in order to avoid a sudden breakdown of these arrangements consequent upon the transfer of power in British India.

The Cabinet Mission announced their proposals after protracted negotiations with all parties and interests concerned on 16 May, 1946. We have already seen details of the proposals elsewhere. With regard to the States, the Mission said that with the attainment of independence by British India, the relationship which had hitherto existed between the States and the Crown would no longer be possible. But Paramountcy would not be transferred to anyone. It must cease to exist. The States should negotiate with British India and establish a new form of relationship which was not necessarily to be identical for all the States. The Mission thought that it was not in the interests either of the people in the States or the people in the Provinces to make any rigid proposals with regard to the States. These proposals were embodied in a detailed manner in the form of a "Memorandum on States' Treaties and Paramountcy" which was handed over to the Chancellor of the Chamber of Princes and was later published. The reaction of the States to the Memorandum was bitter. They felt that the British were abandoning them like an unwanted child at a crucial

stage of Indian political and constitutional development.

Events moved fast in the following months culminating in the partition of the country and the transfer of power on August 15, 1947 and the emergence of the two new Dominions of India and Pakistan. Since Paramountcy was not transferred to the new Dominions, technically the States were independent on August 15, 1947. While the Congress had opposed this theory, the Muslim League had supported it. The Viceroy, Lord Mountbatten, however, had advised and urged the rulers of the States to enter into relations with one or the other Dominion depending on the contiguity of their territory as well as the communal character of their subjects. While some of the States heeded the Viceroy's advice, others cherished ambitions of establishing themselves as sovereign States. Hyderabad, Travancore, Bhopal and Jammu and Kashmir and several others belonged to the latter group. How to foil the designs of these States and achieve the goal of a single federal union was the most difficult problem that faced the Indian Dominion.

This was tackled with consummate skill by Sardar Patel who was in charge of the newly-created Ministry of States with the able assistance of the tactful and experienced Secretary of the Ministry, V. P. Menon. The plan adopted by the Ministry was to request the rulers to accede to the Indian Dominion with respect to three subjects, external affairs, defence and communications without any financial obligations. In addition, the rulers were asked to execute a standstill agreement covering all subjects of common interest. The Instrument of Accession and the Standstill Agreement devised for the purpose weresigned by almost all the States within a short period after the British Government's announcement about the transfer of power. Hyderabad, Junagadh and Jammu and Kashmir were the only exceptions. The Nawab of Junagadh went away to Pakistan leaving the administration of the State to be taken over by the Government of India in 1947. Hyderabad was occupied in September 1948 as there was no other alternative in the face of mounting internal disturbances within the State, which seriously affected the neighbouring Provinces. Kashmir's accession was the last and it was precipitated by Pakistan's intervention in the State by sending raiders to invade Kashmir. Thus, within a short period of two years, all the States contiguous to the territory of the Indian Dominion were united with the erstwhile British Indian Provinces to form the Union of India under the new Constitution.

CHAPTER 13

# THE MAKING OF THE NEW CONSTITUTION

POLITICAL AND administrative unity was the most significant achievement of British rule of two centuries in India. But by August 1947 that achievement had become almost a dream of the past. The theory of Partition which began as a political stunt gathered momentum like the meteoric rise of an upstart and within a period of over a decade brought about what was generally deemed to be impossible, the division of the country. The Partition had its disastrous consequences. Not only did it cut up the organic unity of the sub-continent but completely disrupted the economic fabric which bound the different regions of India together. Industrial centres were cut off from their raw-material base, irrigation systems got unnaturally divided, communication channels such as railways, roadways and inland waterways got artificially sliced, and above all, millions of people were uprooted from their hearths and homes in a two-way population migration that was unprecedented and unheard of in history.

The peaceful transfer of power, the British might claim, was an unique response essentially to a revolutionary situation. But the peaceful character of it was marred by the violence and bloodshed that accompanied the mass migration of people. It showed how human beings would behave in an emotionally surcharged artificial situation inspite of the most intimate ties based on interdependence they built up over generations. The partition of India has also showed that it is usual for revolutionary situations to get out of control and defy the calculations of those who lead them. The artificial division of the country defying its natural and geographical unity was going to adversely affect the future strength and stability of both India and Pakistan. In their anxiety for freedom and independence most of the leaders of both the countries little realised it at the time. But even if they had realised it, they could do perhaps precious little and hence Partition became inevitable.

The struggle for independence was thus over by 15th August

1947. But the attainment of independence was not an end in itself. It was only the beginning of a new struggle, the struggle to live as an independent nation and, at the same time, to establish a democracy based on the ideals of justice, liberty, equality and fraternity. The need of a new constitution forming the basic law of the land for the realisation of these ideals was paramount. Therefore, one of the first tasks undertaken by independent India was the framing of a new constitution.

Mention has already been made of the first meeting of the Constituent Assembly on 9th December, 1946. It was held in an atmosphere of uncertainty created by the absence of the Muslim League members and the apprehensions arising from such a situation. Yet the Assembly made substantial progress by adopting an "Objectives Resolution" which later became the Preamble of the Constitution. It also appointed a number of important committees to deal with the different aspects of the Constitution. These committees were presided over by the foremost political leaders like Nehru and Patel and included among their members a good many leaders of ability and experience. The reports of these committees provided the foundation on which the first draft of the Constitution was prepared by B.N. Rau, the Constitutional Adviser, and the revised draft by the Drafting Committee headed by B.R. Ambedkar.

Once the transfer of power was effected and the earlier uncertain atmosphere disappeared, the work of the Constituent Assembly, with Rajendra Prasad as its President, progressed steadily and smoothly. The Assembly held altogether eleven sessions which covered a period of 165 days. Of these, 114 were spent only on the consideration of the Draft Constitution which had 315 Articles and 13 Schedules. In the final form the Constitution had 395 Articles and 8 Schedules.

The work on the Constitution was conducted in an atmosphere of order and freedom. As many as 7,635 amendments were originally tabled by the members to modify the various provisions of the Draft Constitution. Of these, 2,473 were actually moved, discussed and disposed of. This alone should show the manner in which the Assembly conducted its business. It was indeed a real democratic exercise. Discussion was encouraged to the maximum. There was great tolerance of criticism and no impatience with long drawn-out debates, no attempt to hustle through, no endea-

vour to impose ideas from any quarter.

By 26th November, 1949 the Constitution in its final form was adopted and enacted. But it came into force only on 26th January, 1950, which was the twentieth anniversary of the day on which the Indian National Congress adopted the resolution on "Purna Swaraj"—complete political independence—and which has ever since become the Republic Day of India.

### *India and the Commonwealth*

Before attempting to give a brief resume of the salient features of the Constitution of India, it is appropriate to refer to a striking decision which independent India made and which has been considered as one of historic significance. That was the decision by which she agreed to continue her full membership in the (British) Commonwealth of Nations. What made India change her mind and favoured her continued membership in the Commonwealth deserves consideration.

Before 1947 the Commonwealth was, in Indian minds, synonymous with British rule. But the complete transfer of power as a result of the Indian Independence Act made Indians feel that British domination was dead and if India decided to collaborate with Britain in the Commonwealth it would be the result only of mutual conditions which were acceptable to India as well as Britain and other members of the Commonwealth. The most important of these was the acceptance of India as a Republic—with an elected head of the State—within the Commonwealth. This meant that India was accepted as full member of the Commonwealth without in any way impairing her sovereign republican character. The Commonwealth was no more to be known as "British Commonwealth" but as a free association of independent nations. The British Government's announcement of April 1949 which proclaimed the character of the new association said: "Accordingly the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations freely co-operating in the pursuit of peace, liberty and progress." Equally significant was the provision in the British Nationality Act which came into force on January 1, 1949 and according to which "British subjects" were in

future, to be described as "Commonwealth citizens."

The decision to remain in the Commonwealth, however, was not the product of mere sentiment. India and the United Kingdom had many deep-seated affinities in ideas and institutions, such as the rule of law and the parliamentary system of government. In addition, there were practical considerations too. India had intimate economic ties with Britain. By remaining in the Commonwealth she would continue to enjoy Commonwealth preferences in the matter of tariffs and Indians would continue to enjoy all those rights which they had in the Commonwealth countries prior to Independence. There were many Indians residing in Britain and other Commonwealth countries and British colonies. In the wake of freedom there were also many political, economic and international problems which India faced and in the solution of which the British could extend their assistance. Thus it was past associations, community of economic and strategic interests, common political faith and the fear of isolation that induced India to remain in the Commonwealth. The leaders of the nation who shaped its policies were convinced that the interests of the country would be served better if India remained in the Commonwealth rather than if she went out. But, above all, they knew that it was a free association of independent nations and India could leave the Commonwealth whenever she liked if her continued association with it was detrimental to her interests. Further, no treaty with a foreign power and no declaration of war by a member of the Commonwealth would be binding on her without her express consent.

It should also be noted in this context that the change in the character of the Commonwealth was intended to facilitate India's full membership on her own terms. On her part India has, in return, agreed to recognise the British monarch as the symbol of the free association of the Commonwealth, and as such the head of the Commonwealth. But this does not create any allegiance of the citizens of India to the British monarch. The Constitution of India does not even mention of India's Commonwealth membership. It means that it creates no legal obligations ; nor has it any legal sanction behind it. It is a free and voluntary association which can be cut off, if necessary, at any time as easily as it has been declared.

CHAPTER 14

# THE CONSTITUTION OF THE REPUBLIC OF INDIA

*The Preamble of the Constitution*

INDIA'S CONSTITUTION, the outcome of nearly three years' hard work, has been universally acclaimed for its liberal and democratic spirit which reflects the progressive outlook and high idealism of the country's leaders to whom the political power was transferred. The opening words of the Constitution—the Preamble—proclaims the ideals for which the Indian Republic stands.

"We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity of the nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949 do HEREBY ADOPT, ENACT, AND GIVE TO OURSELVES THIS CONSTITUTION."

The very first words of the Preamble affirm the ultimate authority of the people of India from whose will the Constitution emerged. It proclaims the solemn resolution of the people to constitute India into a Sovereign Democratic Republic. The principle of popular sovereignty has a two-fold implication: First that the ultimate authority of all governmental agencies springs from the will of the people as expressed in the Constitution; secondly that the authority of the Government is renewed from time to time through popular elections at regular intervals. Further, those who wield the executive power of the Government are responsible to the legislatures and through them to the people. Thus, in the affairs of the State, it is the will of the people that prevails ultimately and not the will of a few individuals however great or powerful they may be.

This principle is reaffirmed in several places in the Constitution, particularly in the chapter dealing with elections. The

elections to the House of the People (Lok Sabha) and the Legislative Assembly of every State have to be on the basis of adult suffrage. Further, such elections should take place at least once every five years. The Constitution also ensures the democratic ideal of one man, one vote, one value, irrespective of his wealth, education, social status or importance otherwise. The Constitution is not satisfied by merely providing for universal, adult suffrage. It also ensures free elections by vesting the superintendence, direction and control of all elections in an independent body called the Election Commission.

### *Fundamental Rights*

Adult suffrage and free elections cannot in themselves sustain a free democratic society unless the citizens enjoy certain basic human freedoms or fundamental rights. For, while democracy requires that the will of the people limit the freedom of the Government, it also requires that the freedom of the popular will be limited. A popular will not so limited becomes the tyranny of the majority which destroys the freedom of political competition. The Constitution tries to achieve this objective by embodying in it a set of fundamental rights and guaranteeing them through an independent judiciary. These rights impose limitations both on legislative and executive powers. On the one hand, the legislature is prohibited from passing certain laws which would curtail the individual's freedom. On the other, the executive is compelled to adhere to certain formalities and procedures when it deals with the citizens.

The Constitution affirms the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority. No majority has the right to abrogate such rights. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These Fundamental Rights include all the basic liberties such as equality before the law and equal protection of the laws; prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; equality of opportunity for public employment or appointment to any office under the State; right to freedom of speech, expression, assembly and association; free movement throughout India and the right

to reside and settle in any part thereof; right to property and that to practise any profession or to carry on any occupation, trade or business; right against exploitation; religious freedom which includes the right to freely profess, practise and propagate religion; right of linguistic or religious minorities to establish and administer religious institutions of their choice; right to life and personal liberty. The Constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach directly even the Supreme Court of India to restore to him any fundamental right that may have been violated.

These fundamental rights are in fulfilment of the pledges given to the people of India by the national liberation movement knowing fully well that India was a country of perplexing diversity and that the people of India belonged to different races, religions, languages and cultures. They affirm in emphatic terms that India is a Secular State and what she aims to achieve in a Secular Democracy. This is in complete accord with the ideals of the Indian national movement as well as the desire of Mahatma Gandhi, the Father of the Nation, who once expressed his views about independent India in the following terms: "Free India will be no Hindu Raj; it will be Indian Raj based not on the majority of any religious sect or community but on the representatives of the whole without distinction of religion."

In contrast to the secular ideal embodied in India's Constitution, it is significant to note the provision of the Constitution of Pakistan which declares itself an Islamic State. Under the present Constitution of Pakistan only a Muslim can be the Head of the State. Islam as the State religion has been accorded a special position of privilege in Pakistan.

It must be stressed, however, that the fundamental freedoms guaranteed to the individual under the Constitution are not to override national security and general welfare. For, in the absence of national security and general welfare, individual rights themselves are not secure. Freedom of speech does not mean freedom to abuse another; freedom of movement does not mean freedom of physical attack on others. The Constitution has made express provisions dealing with such limitations of fundamental rights so that those who seek to enjoy the rights may also realise the obligations attending them.

## *Directive Principles of State Policy*

Another important aspect of the Constitution is that embodying the Directive Principles of State Policy. If fundamental rights constitute a *Magna Charta* of the individual's political and civil rights, the Directive Principles constitute a charter of his economic rights. It is true that the fundamental rights safeguard the life, liberty and the pursuit of happiness of the individual. But conditions of absolute and unhindered growth of private power, like absolute governmental power, are capable of destroying individual freedom. Concentration of private power, mainly in the form of economic influence in the hands of a few individuals, is as destructive of the dynamic qualities of a democratic society as a dictatorial government could be. In a highly capitalist society, a few giants in the industrial and financial world, who concentrate in themselves the bulk of economic power, can easily subject the rest of the community to the travails of a new feudalistic order. After having provided against the emergence of a totalitarian governmental system through the constitutional guarantee of fundamental rights, the framers turned their attention to deal with the possible future menace of a private capitalist concentration of economic power and to ensure the establishment and sustenance of a society which would provide for the diffusion of economic power among the different sections of the people. The methods they sought to provide for the purpose are embodied in the chapter on Directive Principles of State Policy.

As the title itself indicates, the principles embodied in this chapter are directives to the various Governments and Government agencies (including even village *panchayats*) to be followed as fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws. Thus, they place an ideal before the legislators of India when they are engaged in framing new legislation for the country's administration. They lay down a code of conduct for the administrators of India while they discharge their responsibilities as agents of the sovereign power of the nation. In short, the Directive Principles enshrine the basic objectives for the realisation of which the State in India stands. They guide the path which will lead the people of India to achieve the ideals which the Preamble of the Constitution proclaims : Justice, social, economic and political ; Liberty, Equality

and Fraternity.

The Directive Principles cover a wide range of State activity embracing economic, social, legal, educational and international problems. The most important of these are :

(1) To secure and protect a social order which stands for the welfare of the people (Art. 38).
(2) In particular, the State shall direct its policy towards securing :
(*a*) adequate means of livelihood to all citizens ;
(*b*) a proper distribution of the material resources of the community for the common good ;
(*c*) the prevention of concentration of wealth to the common detriment ;
(*d*) equal pay for equal work for both men and women ;
(*e*) the protection of the strength and health of workers and avoiding circumstances which force citizens to enter avocations unsuited to their age or strength and ;
(*f*) the protection of childhood and youth against exploitation or moral material abandonment.

Taken together, these principles lay down the foundations on which a new democratic India is to be built up. They represent the minimum of the ambitions and aspirations cherished by the people of India, set as a goal to be realised in the economic and social spheres within a reasonable period of time. Indeed when the State in India translates these principles into reality, she can justly claim to be a "Welfare State".

The fact that the Law Courts in the country cannot enforce these principles does not mean that there is no sanction behind them. As Dr. Ambedkar pointed out in the Constituent Assembly, it is the public opinion and the strength of public opinion that is behind a demand that can enforce these principles. Once in five years elections will take place and then it is open to the electorate not to send the very same persons who are indifferent to public opinion. That is the kind of sanction which the Constitution envisages to enforce these principles.

### *A Union of States*

India is a Union of States. At present, the Union of India is com-

posed of twenty-two States which are the units of the federal Union and nine Territories which are under the direct administration of the Central Government. As such, the political map of India today presents a comparatively simple picture, in contrast to what it was in 1947 when India became independent and in 1950 when the present Constitution was inaugurated. But this is the result of the successful execution of a gigantic task of integration and reorganisation during the first ten years of Independent India.

The Constitution aims to establish a dual polity of dividing the totality of governmental power between the Union and the States. According to Ambedkar, "the Union is not a League of States united in a loose relationship, nor are the States the agencies of the Union. Both the Union and the States are created by the Constitution ; both derive their respective authority from the Constitution. The one is not subordinate to the other in its own field ; the authority of one is co-ordinate with that of other." The resulting system of government is called a federal system of government.

The scheme of division of powers between the Union and the States in general may be described in the following manner :.

*Legislative Field*

Subjects for legislation are enunciated in an exhaustive manner and grouped together under three Lists—Union List (97 items). State List (66 items) and Concurrent List (47 items). The Union List includes items such as defence, foreign affairs, inter-state communication, inter-state trade and commerce, currency, banking control of industries, etc. which are of common interest to the Nation as a whole and with respect to which uniformity of legislation throughout the country is essential. As such, Parliament, alone has the power of making laws with regard to every item included in this List.

The selection of items included in the State List is made on the basis of local interest and it envisages the possibility of diversity of treatment with respect to these items. Examples of the more important of these are public order, police, public health, education, agriculture, agricultural income-tax, taxes on professions, trades, callings, etc. Thus State Legislatures alone can pass laws on these items.

The Concurrent List includes those items with respect to which

uniformity of legislation throughout the country is desirable but not essential. There is scope for local variations depending on the conditions and circumstances of particular state or region. Items such as marriage and divorce, transfer of property other than agricultural land, contracts, civil procedure, criminal procedure commercial and industrial monopolies, welfare, social security, price control, factories, eletricity, adulteration of food stuffs, etc., are included in this List. Both Parliament and State Legislatures are competent to pass laws on all these items. So long as Parliament does not pass a law on any of these items, the States may pass any law they like on the same. But once parliament does enact a law, that law shall prevail over any State law in this regard. In exceptional cases, however, a State may pass a law which supersede an existing Parliamentary law if that law receives the assent of the President.

The residuary powers of legislation are vested in the Union.

*Administrative Field*

The basic objective underlying the constitutional provisions in this area is to avoid clashes between the Union and the States in the administrative field. Accordingly, it is provided that the executive power of every State is to be exercised in such a way as to ensure compliance with the laws made by Parliament. Further the Union Executive is empowered to give such direction to a State as may appear to the Government of India necessary for the purpose. Not satisfied with these general provisions, the Constitution goes a step further and calls upon every State not to impede or prejudice the executive power of the Union in the State. If any Union agency finds it difficult to function within a State, the Union Executive is empowered to issue appropriate directions to the State Government to remove all obstacles. Such power includes certain specific matters such as:

(*i*) construction and maintenance of means of communication which are of national or military importance; and
(*ii*) the protection of railways within the State.

*Financial Field*

The basic principles that guide the allocation of resources bet-

ween a federation and the units are efficiency, adequacy and suitability. It is indeed difficult to achieve all the three ends in appropriate measure at the same time. Even if a certain system might suggest itself as the most acceptable, it would not satisfy all the claims and counter-claims of the various States. Hence the Constitution has attempted a compromise. Accordingly, the subject is divided into two parts: the allocation of revenues between the Union and the States, and the distribution of grants-in-aid.

The main sources of revenue for the Union are : Corporation tax, currency, coinage, legal tender and foreign exchange, customs duties, excise duties, foreign loans, railways, Reserve Bank of India, income-tax, capital gains tax, taxes on transactions in stock exchanges and future markets, etc.

The main sources of revenue for the States are : land revenue, agricultural income-tax, taxes on land and buildings, taxes on consumption or sale of electricity and water, taxes on vehicles and animals, taxes on professions, trades, callings and employments, taxes on luxuries including entertainments, taxes on sales and purchase of goods, tolls, etc.

Federalism, it is said, is not only a unifying but also a levelling process. Among the constituent States of the Union are some which are comparatively more developed while there are others which are less developed or backward. The latter ones should have the opportunity to march forward as integral parts of the Union. Since the taxes allotted to the States do not provide adequate financial resources for their speedy development, the Constitution makes special provision for grants-in-aid of the revenues of such States to the extent necessary.

An analysis of the relations between the Union and the States in the legislative, administrative and financial fields as a whole will show that the fundamental aim of the Constitution is to achieve unity in diversity. Up to a point the diversity is to be welcome as an attempt to accommodate the powers of Government to local needs and circumstances. But the framers were at the same time conscious of the fact that too much emphasis on local autonomy was inherently dangerous to the unity of the Nation. Hence the type of federal system which the Constitution aims to establish is one which safeguards national unity by placing in the Union many special powers which are capable of controlling fissiparous tendencies. These special powers and the various agencies created under

special provisions of thc Constitution make the federal system in India a class by itself. Some of these special provisions deserve closer attention.

*Single Citizenship*

Although the Constitution envisages a dual system of government, it does not establish dual citizenship which empowers each member-State to grant its citizens or residents certain rights which it may deny, or grant on more difficult terms to non-residents. On the contrary, it establishes a uniform or single system of citizenship, for the whole country which removes most of the artificial State barriers that prevailed in pre-independence days and facilitates the freedom of trade and commerce throughout the territory of India. It permits not only free movement throughout the territory but also acquisition of property and the right to settle down at any place of one's choice. Another incident of single citizenship is that any citizen can contest for a seat in the Parliament of India from any constituency anywhere in India.

*A Single System of Judiciary*

Unlike many countries with federal constitution, India has a single judicial system. The special advantage of a single system of judiciary is that it avoids diversity in jurisdiction arising out of separate system of federal and State courts. Under the Constitution all the courts in India are hierarchically linked together. The Supreme Court stands at the apex of this judicial hierarchy with effective power to supervise and control the working of the entire system and to ensure the realisation of the high judicial standards that it might set as an integral part of the democratic system of government which the Constitution seeks to establish.

The single hierarchical system of judiciary has brought about not only jurisdictional unity but also a single judicial cadre, as it were, for the whole country. As a result, the citizen is treated under the same system of laws and judicial procedures all over the country and ultimately he is at liberty to go to the Supreme Court of India, no matter what the nature of legal conflict he may confront. The writ of the Supreme Court runs not only all over the country, Central, State and Local areas, but also within fields of

law, constitutional, administrative, civil and criminal.

Appointments to the Supreme Court and the High Courts are made by the President. Judges of the High Courts can be transferred by the President from one High Court to another.

*Emergency Powers*

The constitution vests in the President of the Union certain emergency powers to meet three different unusual situations; war or threat of external aggression or internal disturbance affecting the security of the country; a breakdown of the constitutional machinery in any State; threat to the financial security or credit of India. As a result of the Proclamation of Emergency by the President, the Union Government gets special powers to deal with the situation. The federal provisions of the Constitution can be partly or fully suspended during the pendency of the emergency and the nation as a whole can be mobilised under the leadership of the Union to meet the new situation. The emergency authorises the Union Government even to suspend the operation of the guaranteed fundamental rights of the citizen to the extent necessary.

## *Special Provisions to Safeguard National Unity*

*The President*

Since India is a Republic, the Constitution provides for a President of India and the executive power of the Union Government, including the supreme command of the armed forces, is vested in him. By virtue of this special position the President is the symbol of national unity and authority. This is why every action of the Union Government is taken in his name or under his authority and every proclamation of emergency is made by him. Every representative of India abroad is appointed by him and represents the nation through him. Similarly every representative of other nations in India presents his credentials to him as the head of the nation.

*The Governors*

The President appoints all the Governors and they hold office

during his pleasure. Although every Bill passed by the State Legislatures normally becomes law with the assent of the Governor, certain Bills are reserved by him for the assent of the President. Only with the assent of the President can such Bills become law.

*All-India Services*

There are certain special provisions to ensure the uniformity of the administrative system throughout the country and to maintain minimum common administrative standards. These include the creation of All-India Services, such as the Indian Administrative and Police Services and placing the members of these services in key administrative positions in the States and the Union.

*The Comptroller and Auditor-General*

The Comptroller and Auditor-General of India has an organisation managed by the officers of the Indian Audit and Accounts Service—a Central Service, who are concerned not only with the accounts and auditing of the Union, but also those of the States.

*The Election Commission*

The Election Commission, a body appointed by the President, is in charge of conducting elections not only to Parliament and to other elective offices of the Union, but also those to the State Legislatures.

*Constitutional Amendment*

Constitutional amendment is a comparatively simple process in India. This emphasises the flexibility of a federal constitution which has to cater for both unity and diversity. Extreme rigidity is bound to defeat its very purpose. In the final analysis the test of a Constitution is in its working point. If it is found to be defective in any respect in its actual working it should be suitably amended. For this, the amending process should be reasonable and simple and easy.

There are three ways in which the Constitution can be amended. There are certain parts which are of a transitory nature and which

require modification to suit the changing times. Such amendment can be effected by Parliament by simple majority. In the second category are placed the chapters on Fundamental Rights and Directive Principles of State Policy. These can be amended by Parliament alone by a two-thirds majority. The provisions of the Constitution which deal with the Union-States relationship belong to the third category and to amend them, in addition to a two-thirds Parliamentary majority, the affirmative vote of at least half of the State Legislatures is also required.

*Inter-State Trade and Commerce*

From the very beginning of its deliberations the Constituent Assembly was keen to ensure the freedom of inter-State trade and commerce throughout the Union. The broad principle underlying this freedom is that within the country, in spite of its federal character, trade and commerce should develop to the largest possible extent and not be hindered by artificial barriers and restrictions indiscriminatingly imposed by the various States of the Union. Only in this manner the economic unity of the nation can be preserved and maintained. At the same time, it was also necessary to take into account the differing economic conditions prevailing in different parts of the country.

Accordingly, the Constitution has taken into account the larger interests of India as a whole as well as the special interests of particular States and the wide geography of this country, in which the interests of one region differ from those of another.

*Responsible Government*

The Constitution has adopted the British model of Cabinet System of responsible government as distinguished from the Presidential System. An overwhelming majority of members in the Constituent Assembly were in favour of adopting the Cabinet System because they were of the view that (1) it would provide for the strongest executive consistent with a democratic constitutional structure and (2) that India was familiar with the working of the system for about thirty years prior to the transfer of power by the British.

*Office of the President*

Since India is a Republic, the Constitution provides for a President of India and the executive power of the Union Government, including the supreme command of the defence forces, is vested in him. The Constitution prescribes only simple qualifications for a Presidential candidate. He should be a citizen of India who has completed the age of 35 years and is qualified to be elected as a member of the House of the People. The President cannot be a member either of the Parliament or a State Legislature.

The President is elected for five years by an electoral college composed of all the elected members of Parliament and the State Assemblies in accordance with the system of proportional representation by means of the single transferable vote. In view of the position of the President in a parliamentary form of government, direct election was considered unnecessary. Before entering upon his office, the President has to take and subscribe in the presence of the Chief Justice of India an oath or affirmation to the effect that as President he will "preserve, protect and defend the Constitution and the law and devote himself to the service and well-being of the people of India".

The President's Office becomes vacant in three ways: death, resignation or removal by impeachment. The President can be impeached for "violation of the Constitution" through a resolution in either House of Parliament. The charge shall be preferred only if such a resolution is passed by two thirds majority in each House of Parliament.

The powers of the President may be broadly classified under three categories: Executive, Legislative and Emergency.

*Executive Powers*

Since the President is the Head of the Union Executive, his executive powers embrace the entire field of activities of the Union. He appoints the Prime Minister and other members of the Council of Ministers and makes rules for the transaction of the business of the Government of India and the allocation, among the Ministers, of that business. He also appoints the Attorney-General, the Chief Justice and Justices of the Supreme Court and those of the High Courts, the members of the Union Public Service Commission, the

Comptroller and Auditor-General of India, the Chief Election Commissioner, Ambassadors and other diplomatic representatives of India abroad, the Commissioner for Scheduled Castes and Tribes, Governors of States, Chief Commissioners of Union Territories, etc. In fact, every appointment of the Union Government is made in the name of the President or under his authority.

Under Art. 72 the President is given the power to grant pardons. According to this, in all court martial cases as well as cases involving the breach of a Union law where a punishment or sentence is inflicted on any person, the President may grant pardon or any other appropriate mercy such as reprieve, respite, remission, or suspension, or commutation of the sentence.

*Legislative Powers*

In the legislative field too, the President has important powers. In fact, the President forms an integral part of the legislative process in that without his assent, no Central Bill can become law. He summons the Houses of Parliament, prorogues the Houses and may dissolve the house of the People. He may address either House of the Parliament or both Houses assembled together or send messages to them. He nominates 12 members to the Council of States and may nominate two members of the Anglo-Indian community to the House of the People. Every Bill passed by Parliament must be presented to the President for his assent. He may withhold his assent or return it to Parliament for reconsideration. He causes to be laid before Parliament the annual budget showing the estimated receipts and expenditure of the Union for each year. No demand for a financial grant can be made in Parliament except on his recommendation.

Perhaps, the most important legislative power of the President is his power to promulgate Ordinances under Art. 123. According to this, the President is empowered to promulgate Ordinances, except when both the Houses of Parliament are in session, if he is satisfied that circumstances exist compelling him to take immediate action. A Presidential Ordinance has the same force and same effect as an Act of Parliament. However, every such Ordinance should be laid before both Houses of Parliament within six weeks from re-assembly of Parliament. Failure to comply with this condition, or Parliamentary disapproval within the six weeks' period will make the

Ordinance invalid. The President may also withdraw the Ordinance at any time he likes.

*Emergency Powers*

The President is empowered to declare three different types of emergency. He may declare an emergency either in any part or the whole of India, if he is satisfied that there is a threat of war or external aggression or internal disturbance. Further, he is empowered to declare an emergency in case of a breakdown of the constitutional machinery in any State of the Union. He may also declare, in case of a financial breakdown, a financial emergency.

*The President and the Council of Ministers*

In the discharge of his functions the President is aided and advised by a Council of Ministers who are collectively responsible to the House of the People or Parliament. The Prime Minister is the head of the Council. The Ministers are appointed by the President and hold office during his pleasure.

Taken as a whole, and at their face value, the Presidential powers are formidable indeed. But since the government envisaged under the Constitution is modelled after the Cabinet system of Government in Britain, these powers are only formal and not real. As Ambedkar stated in the Constituent Assembly: "The President occupies the same position as the king under the English Constitution. He is the head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on the seal by which the nation's decisions are made known"-

In a parliamentary system of government, the Executive is responsible to the Legislature. As such, the Council of Ministers hold their offices not by the grace of the President (or literally during his pleasure) but because of the confidence of Parliament which they enjoy. They go out of office not because the President has lost confidence in them, but because they have lost the confidence of Parliaments to which they are jointly and directly responsible. There can be no conflict between the will of Parliament, which represents the electorate, and that of the President. If at all there

arises such a conflict, the will of the Parliament ought to prevail. That is why the Constitution vests in Parliament the power to impeach the President. Therefore, so long as the Council of Ministers have the confidence of Parliament, the President is literally bound by their advice and, in reality, it is the President who is cast in the role of an adviser.

### *The Vice-President*

The Constitution provides for a Vice-President whose role in the Government is comparatively unimportant. The main function of the Vice-President is to preside over the Council of States. He is its ex-officio Chairman. Further, if the President dies or resigns or is otherwise incapacitated and, as a result, the Presidential office becomes vacant, the Vice-President will act as President for a maximum period of six months.

### *The Parliament of India*

The Legislature of the Union is called the Parliament of India which consists of two Houses—the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). The President is an integral part of Parliament in conformity with the principles and traditions of parliamentary government.

The members of the Lok Sabha are elected directly by the people except in a few cases. For the purpose of the election, each State is allotted a certain number of seats on the basis of its population and each State is divided into as many territorial constituencies as there are seats. The maximum strength of the House is 545.

There is hardly any qualification that the Constitution prescribes for a member of Parliament, except that he should be an Indian citizen and should have completed the age of twenty-five years if he seeks election to the Lok Sabha and thirty years if he seeks election to the Rajya Sabha.

The normal life of the Lok Sabha is five years from the date of its first meeting. But it may be dissolved earlier by the President who is also empowered to extend its life on account of a national emergency. The House shall meet at least twice a year and the interval between two sessions shall be less than six months. The time and the place of meeting will be decided by the President

who will summon the House to meet. He has also the power to prorogue the House.

The maximum membership of the Rajya Sabha is limited to 250. Its present strength, however, is 235. Of those, 223 are elected by the members of the various State Legislative Assemblies. For the purpose of this election, each State is allotted a certain number of seats. The main basis of such allotment is the total population of each State although the smaller States are accorded some weightage in representation. The election of members is conducted in accordance with the system of proportional representation by means of the single transferable vote. The remaining twelve seats are filled by nomination by the President.

The Rajya Sabha is a permanent body. Its members are elected for six years and at the end of every second year, one-third of the members are replaced by those newly elected. This provision enables the Council to retain its political complexion in a more stable manner than the Lok Sabha which after every election is a completely new House.

The Lok Sabha is presided over by the Speaker who is elected by the House from among its own members. The Speaker has extensive powers to regulate the procedures under which the business of the House is conducted. He can be removed from office only by a resolution passed by a majority of all the then members of the House. The House has also an elected Deputy Speaker who presides over it in the absence of the Speaker. To facilitate the work of the House in the absence of both the Speaker, and Deputy Speaker, there is provision for one of the members of the House out of a panel of six Chairmen, whom the Speaker nominates from time to time, to preside over its deliberations.

The Rajya Sabha is presided over by the Vice-President of India who is its ex-officio Chairman. In the absence of the Chairman, an elected Deputy Chairman presides over it. The Council also has a panel of members called "Vice-Chairman" nominated by the Chairman for the purpose of presiding over it in the absence of the Chairman and the Deputy Chairman.

*Relationship between the two Houses*

Although the collaboration of both the Houses is essential for all legislative activities and without such collaboration practically

no legislation can be passed, the Constitution has recognised the superiority of the Lok Sabha over the Rajya Sabha in certain respects. The most important of these is the relationship between the Council of Ministers and Parliament, according to which the Ministers are individually and collectively responsible only to the Lok Sabha. This means that the Lok Sabha alone has the right to pass a censure motion against the Government of the day. The confidence of Parliament means the confidence of the Lok Sabha and responsibility of the executive means responsibility primarily to the Lok Sabha. This is in conformity with the well-known principle of parliamentary democracy which ensures the accountability of the government to the people through their directly elected representatives.

Secondly, the power of the Council with regard to Money Bills is almost negligible. Every Money Bill should be introduced in the House of the People. It is the fundamental principle of every taxation measure that it should be taken only with the consent of the people. In a democracy the people's consent is essential both for the raising of public revenues and their spending. Here again, the people's consent can be expressed only by a House which is elected directly by the people. Under the procedure established by the Constitution, however, the Council is not altogether prevented from scrutinizing Money Bills. But its power is only of an advisory character. Every Money Bill passed by the House will go to the Council for its consideration and within fourteen days after the receipt of the Bill, the Council must take whatever action it deems fit. It may pass it in which case the Bill goes to the President for his assent. If the Bill is amended or rejected by the Council it goes back to the House, where it is reconsidered and voted by a simple majority and sent to the President. Thus, in financial matters, the Council has only an advisory role and the House has the final say.

In all other matters of legislation, including constitutional amendment, the extent of the Council's power is the same as that of the House. A Bill can be initiated either in the House or in the Council. The Council may amend or reject a Bill that is passed by the House. If the House does not agree with the action of the Council, the contested measure is placed before a joint sitting of both the Houses and passed by a simple majority. As the total membership of the Council is less than even half the total strength of the House of the People, the House is naturally bound to win in a conflict of this

nature between the two. A Bill passed in a joint sitting is sent straight to the President for his assent.

### *The Supreme Court*

The Supreme Court of India plays a unique role in the scheme of constitutional government in the country, as the highest appellate judicial authority and final interpreter of the Constitution as well as the guardian of the Fundamental Rights. Although the Constitution establishes a federal policy, unlike many other countries with federal constitutions, India has a single judicial system which has brought about not only jurisdictional unity but also the establishment of single judicial cadre, as it were, for the whole country. With the Supreme Court at its apex the Indian judiciary is a fully integrated system under which the writ of the Supreme Court runs not only all over the country, Central States, and Local areas, but also within all fields of law, constitutional, civil and criminal.

The Constitution envisages an independent Court. The independence of the judges is ensured by the following provisions : (1) Every judge of the Supreme Court is appointed by the President of India after consultation with such of the judges of the Supreme Court and the High Courts of the States as the President may deem necessary for the purpose. But in the appointment of a judge, other than the Chief Justice, consultation of the Chief Justice of India by the President is obligatory. (2) The elimination of politics in the appointment of judges is further achieved by prescribing high minimum qualifications in the Constitution itself. (3) A judge once appointed holds office until he completes the age of sixty-five years. (4) A retired judge is prohibited from practising law before any court in India. (5) A Supreme Court judge can be removed from office only on the grounds of proved misbehaviour or incapacity, when a resolution for the purpose is passed by both Houses of Parliament supported by two-thirds of the members present and voting and a majority of the total membership of the House. (6) The conditions of service of a judge cannot be altered to his disadvantage after his appointment. (7) The independence of the judges is further safeguarded by making all their actions and decisions in their official capacity immune from criticism and also providing for an establishment over which the Court has complete control.

*The Court's Jurisdiction*

The Supreme Court has exclusive original jurisdiction in any dispute between (*a*) the Government of India and one or more States: or (*b*) between the Government of India and any State or States on one side and one or more States on the other; or (*c*) between two or more States. The Court has four types of appellate jurisdiction : constitution, civil, criminal and special. In any case which involves an interpretation of the Constitution the appellate jurisdiction of the Court can be invoked. In civil cases the Courts jurisdiction is restricted to those disputes the subject matter of which involves Rs. 20,000 or above. In the criminal field the jurisdiction of the Court can be invoked only if a High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or certifies that the case is a fit one for appeal to the Supreme Court. Under Article 136 the Supreme Court is empowered to entertain special appeals in its discretion from any judgement or order in any case passed by any court or tribunal in India. This is a kind of extraordinary power which the Court as the highest court in the land is entitled to make use of in the interest of justice. The Court also may give its advice to the President on a question of law or fact of public importance as and when the President refers such a matter to the Court.

The law declared by the Supreme Court through its decisions is binding on all courts in the country. Further, in the exercise of its jurisdiction, the Court is authorised to pass appropriate decrees or orders in the interests of justice. Such decrees and orders are enforceable throughout the territory of India. It has also the power to secure the attendance before it of any person within the country or order the discovery and production of any documents, or the investigation or punishment of any contempt of itself.

Under the Constitution, the powers of Parliament are limited in two ways. First, there is the division of powers between the Union and the States. Parliament is competent to pass laws only with respect to those subjects that are included in the Union List and Concurrent List. Secondly, parliamentary power is restricted on account of the Fundamental Rights which are guaranteed against

every form of legislative encroachment.

The Supreme Court is the ultimate interpreter of the Constitution and thus the protector of the Fundamental Rights guaranteed therein. In the exercise of this power, it can issue writs or orders to any administrative authority in any part of India to prevent the infringement of any Fundamental Right. It is also the arbiter of constitutional conflicts arising out of the division of powers between the Union and the States and, therefore, stands in a unique position wherefrom it is competent to exercise the power of reviewing the legislative enactments both of Parliament and the State Legislatures. This power of the Court to review the Union or State legislation is termed judicial review.

The Supreme Court's power of judicial review is not confined to legislative enactments only. It embraces equally the administrative field also. Judicial review of administrative action by the Court is a powerful instrument with which the Court can protect individuals or groups against arbitrary or unlawful acts by officials or administrative agencies.

*The Comptroller and Auditor-General of India*

There are two more independent bodies under the Constitution which deserve special mention. These are the Comptroller and the Auditor-General of India and the Union Public Service Commission.

The provision for independent audit is an essential ingredient of parliamentary democracy. Parliament being the representative of the popular will and the Executive being responsible to Parliament for all its actions, among other things, it is also a function of Parliament to scrutinise the financial dealings of the Government and to ensure that the tax-payer's money is properly spent. Parliament needs the assistance of an expert for this purpose and the Constitution provides this through the creation of the office of the Comptroller and Auditor-General of India.

The C.A.G. is appointed by the President. He can be removed from office only in like manner and on like grounds as a judge of the Supreme Court. His salaries and other conditions of service may be determined by Parliament. But once appointed these conditions cannot be varied to his disadvantage. After retirement or resignation he is not eligible for any office under the Government

of India or any State Government. The Administrative expenses of the office of the C.A.G. are charged upon the Consolidated Fund of India. It is also provided that the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the C.A.G. will be prescribed by rules made by the President after consultation with the C.A.G. These rules, however, are subject to the provisions of the Constitution as well as any law made by Parliament in this behalf.

Parliament is empowered to prescribe the powers and duties of the C.A.G. in relation to the accounts of the Union and the States. He has the power, subject to the approval of the President, to prescribe the form and manner in which the accounts of the Union and the States shall be kept.

The Department of the C.A.G. is expected to discharge three main functions :

(*i*) to audit the Government's expenditure;
(*ii*) to see that the financial rules and orders which have a bearing on governmental expenditure are obeyed; and
(*iii*) to satisfy itself that those who sanction expenditure have the power to do so.

The C.A.G. has also the obligation to examine the accounts from the standpoint of economy and draw the attention of the Public Accounts Committee of Parliament to cases of apparent waste and extravagance. The success or failure of that Committee's work mainly depends on thc quality of the reports of the C.A.G. His reports will not only ensure that appropriations made by Parliament are not exceeded without supplementary grants but also that the expenditure conforms to the rules. In addition, he must also satisfy himself on behalf of Parliament about the wisdom, faithfulness and economy of the spending programme of the Government.

The reports of the C.A.G. relating to the field of Union activities are submitted to the President. Those relating to the accounts of the States are submitted to the respective Governors. These reports are laid before Parliament and the State Legislatures responsibility. The fact that the same agency is charged with the responsibility of scrutinising the financial dealings of both the Union and the States and performs the function of control of the finances of the nation as a whole facilitates the maintenance of uniform standards

throughout the federal system in a vital sector of public administration.

### *The Union Public Service Commission*

The purpose of a Public Service Commission is to secure an efficient civil service, protect it from political and personal influences and to give it that position of stability and security which is vital to its working as an impartial and efficient instrument by which Governments of whatever party in office may give effect to their policies. In a country like India with a huge population which is multilingual, multi-racial and multi-religious in character, the importance of a Public Service Commission is obvious. This is why the framers decided to incorporate in the text of the Constitution special provisions for the setting up of Public Service Commission under the Union as well as the States.

The Union Public Service Commission consists of a Chairman and as many members as are decided by the President by regulations. They are appointed by the President for a period of six years. At least one half of the members should be persons with a minimum of ten years' experience in Government service. A member of the Commission is ineligible for the same appointment for a second term. His further employment elsewhere also is severely restricted. His conditions of service cannot be varied to his disadvantage after his appointment. He can be removed from office only by an order of the President on the ground of misbehaviour. There is a prescribed procedure for the purpose. According to this, the matter will be referred to the Supreme Court by the President and the Court will conduct an enquiry and will submit its report to the President.

The Commission has the following functions :

(1) To conduct examinations for appointments to the services of the Union; (2) To assist the States in framing and operating scheme of joint recruitment if two or more States request the Commission in this behalf; (3) To advise the Union (*a*) on all matters relating to methods of recruitment to civil services; (*b*) on the principles to be followed in making appointments to civil services and promotions, transfers, etc; (*c*) on all disciplinary matters affecting Government servants of the Union; (*d*) on claims for costs of legal proceedings instituted against a Union official; (*e*) on claims

for the award of pension in respect of injuries sustained by a Union official on duty; and (*f*) any other matter specially referred to it by the President.

The Union Public Service Commission has to submit to the President an annual report on the work done by the Commission. The report accompanied by a memorandum explaining the action taken by the Government on the recommendations of the Commission has to be placed before both the Houses of Parliament. The memorandum should also explain the reasons for the non-acceptance of the recommendations of the Commission by the Government, if there are any such cases of non-acceptance.

### *A Uniform Constitution for the States*

A special feature of the Constitution of India, unlike most federal constitutions, is that it embodies not only the Constitution of the Union but also that of the States. The position is also simplified by making one model constitution which is applicable to all the States. Further, the machinery of Government in the States is organised on the same pattern as that of the Union Government. As in the Union, the Government in the States is based on the parliamentary model. The Head of the State is called the Governor who is the constitutional head as the President is for the Union. The Chief of the State Government is called the Chief Minister who is the counterpart in the State of the Prime Minister of India. There is a Council of Ministers for each of the States as in the Union. Governmental activities are divided mainly on a functional basis and grouped together as distinct departments each of which is placed under a Minister just as the various Ministers at the Centre.

The organisation of the States Legislature is also more or less on the model of the Indian Parliament. In the judicial field, the High Court occupies the same position within the State as the Supreme Court does for the whole of India. Thus, the State Government is almost a true copy of the Union Government within the jurisdiction of each State. This helps the States to draw examples and inspiration from the working of the Union Government in almost every field of their activity.

In his valedictory address to the Constituent Assembly, B.R. Ambedkar, the Chairman of the Drafting Committee said:

> However good a constitution may be, it is sure to turn out bad

because those who are called to work it happen to be a bad lot. However bad a constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a constitution does not depend wholly upon the nature of the constitution. The constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their policies. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods for achieving their purposes or will they prefer revolutionary methods of achieving them ? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is therefore futile to pass any judgement upon the constitution without reference to the part which the people and their parties are likely to play.

The Constitution of the Republic of India ever since its inauguration in January 1950 has been on severe test, but continues to provide the foundation on which the rule of law in this country is sustained in spite of the myriad stresses and strains through which it has been passing.

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Widely travelled in India and abroad, Prof. Pylee has written a num books and published many research papers. He has also participate several international seminars and conferences and is closely associated a variety of educational, administrative, research and professional bodies.

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